

No. 11561

United States
Circuit Court of Appeals
For the Ninth Circuit.

NORTHERN TRUCK LINE, INC.,
a corporation,

Appellant,

vs.

EARL DUNN,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Territory of Alaska, Third Division

JUN - 7 1947

PAUL F. O'NEILL
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

GEORGE B. GRIGSBY,

Anchorage, Alaska.

Attorney for Northern Truck Lines, Inc.,
Defendant and Appellant.

J. L. McCARREY, JR.,

Anchorage, Alaska.

Attorney for Earl Dunn,
Plaintiff and Appellee.

In the District Court for the Territory of Alaska,
Third Division

No. A-3936

EARL DUNN,

Plaintiff,

vs.

NORTHERN TRUCK LINE, INC.,

Defendant.

COMPLAINT

Comes now Earl Dunn, the above named plaintiff, and complains and alleges against the defendant as follows:

I.

That the defendant, Northern Truck Line, Inc., is now, and at all times mentioned herein was, a corporation existing under and by virtue of the laws of the State of North Dakota and doing business within the Territory of Alaska.

II.

That between the 1st day of January, 1944, and the 15th day of May, 1944, plaintiff, at the special instance and request of the defendant, and for the benefit of the defendant, negotiated certain hauling contracts with the Civil Aeronautics Administration of the United States of America, at Anchorage, Alaska, and furnished certain money, labor, equipment and supplies in procuring such contracts.

III.

That the defendant agreed to pay the plaintiff for his work, labor and for the payment of money, materials, equipment and supplies furnished by the plaintiff in the negotiation of such contracts; that the sum of \$1,500.00 is the reasonable value of the plaintiff's services, and of the money advanced, and equipment and supplies furnished by the plaintiff in negotiating the said contracts on behalf of the defendant with the Civil Aeronautics Administration of the United States of America. [1*]

IV.

That as plaintiff is informed and believes and so alleges the fact to be, the defendant received the gross sum of \$55,425.48, for hauling performed by the defendant from the Civil Aeronautics Administration, and that by reason of the plaintiff's services, and of the money advanced, and equipment and supplies furnished by the plaintiff, in negotiating the said contracts, the plaintiff became entitled to the sum of \$1,500.00 from the defendant.

V.

That plaintiff has repeatedly requested payment of the amount due to him from the defendant as hereinabove mentioned, but that no part of the same has been paid and that there is now due and owing to the plaintiff from the defendant the sum of \$1,500.00, together with interest on that sum at the rate of six (6) per cent per annum from the 1st day of January, 1945.

* Page numbering appearing at foot of page of original certified Transcript of Record.

Wherefore, plaintiff prays for judgment against the defendant in the sum of \$1,500.00, together with interest on that sum at the rate of six (6) per cent per annum from the 1st day of January, 1945, together with plaintiff's costs and disbursements in this action incurred and for such other and further relief as to the Court may seem equitable and just.

/s/ J. L. McCARREY,, JR.

Attorney for Plaintiff.

United States of America,
Territory of Alaska—ss.

Earl Dunn, being first duly sworn, upon his oath, deposes and says:

That he is the plaintiff in the above and foregoing action, that he has read said complaint, knows the contents thereof, and believes the same to be true.

/s/ EARL DUNN.

Subscribed and Sworn to before me this 20th day of October, 1945.

[Notary Seal] /s/ J. L. McCARREY, JR.,
Notary Public in and for the Territory of Alaska.

My commission expires: 6/10/46.

[Endorsed]: Filed Oct. 22, 1945. [2]

[Title of District Court and Cause.]

ANSWER

Comes Now the defendant in the above entitled action, and answering the Complaint of the plaintiff filed herein, admits, denies and alleges as follows:

I.

Admits the allegations contained in Paragraph I of plaintiff's Complaint.

II.

Denies each and every allegation contained in Paragraph II of plaintiff's Complaint and the whole thereof.

III.

Denies each and every allegation contained in Paragraph III of plaintiff's Complaint and the whole thereof.

IV.

Denies each and every allegation contained in Paragraph IV of plaintiff's Complaint and the whole thereof, except that defendants admits it received approximately the sum of Fifty-Five Thousand, Four Hundred Twenty-Five and 48/100 Dollars (\$55,425.48) from the Civil Aeronautics Administration for hauling performed by the defendant.

V.

Denies each and every allegation contained in Paragraph V of plaintiff's Complaint and the whole thereof. [3]

Wherefore, defendant prays that said action be dismissed and for its costs and disbursements herein.

/s/ GEORGE B. GRIGSBY,
Attorney for Defendant.

United States of America,
Territory of Alaska—ss.

Chris Haugen, being first duly sworn, deposes and says: That he is an officer and the managing agent of the defendant in the above entitled action; that he has read the foregoing Answer and knows the contents thereof, and that the same is true as he verily believes.

/s/ CHRIS HAUGEN.

Subscribed and sworn to before me this 23rd day of October, 1945.

[Seal] /s/ GEORGE B. GRIGSBY,
Notary Public for Alaska.

My Commission Expires: May 14, 1947.

Service admitted this 23rd day of October, 1945.

/s/ J. L. McCARREY, JR.,
Attorney for Plaintiff.

[Endorsed]: Filed Oct. 23, 1945. [4]

[Title of District Court and Cause.]

MEMORANDUM OF EXCEPTIONS

At the conclusion of the reading of the instructions to the jury in open court in the above entitled case, the following proceedings were had in the presence of the jury, but not in the hearing of the jury:

Court: The plaintiff has the first right to except.

Mr. McCarrey: I have no exceptions.

Court: All right, Mr. Grigsby. I have inserted the word "all" on page 1.

Mr. Grigsby: I except to Instruction No. 3 on the ground that it fails to contemplate the defense in this case, which was that any activities engaged in by the plaintiff with reference to negotiating these contracts was to be compensated for by the employment of the plaintiff and his trucks in the performance of the contract. I except to this part of the instruction as follows:

“To justify a verdict for the plaintiff it is incumbent upon the plaintiff to prove, by such preponderance of the evidence, the material averments of his complaint, namely, that during, or about, the time mentioned and at the special instance and request of the defendant, and for the benefit of the defendant, the plaintiff performed the services and furnished the money, labor equipment and supplies of the reasonable value of \$1500; that plaintiff has demanded of defendant payment of said sum and defendant has failed and refused to pay the same or any part thereof. If the plaintiff has proved each and all of the material allegations of his complaint, by a fair preponderance of the evidence, then your verdict should be for the plaintiff.”

Now, we object to that instruction on the ground that all of the conditions set forth in Instruction 3 might have been compiled with—the services might have been performed at the request of the defendant, and they [5] might have been of the value of \$1500, and demand might have been made—but pay-

ment might have been according to the contention of the defendant; the consideration might have been the employment of the plaintiff's trucks on the project, and the instruction fails to contemplate that.

Court: Exception will be noted as of course.

Mr. Grigsby: We except to 3-B on the same ground, that it fails to contemplate the defense of the defendant that all compensation to the plaintiff for any connection he had with securing the contracts was to be received by employment of his trucks. You have changed \$75,000 to \$55,000?

Court: Yes, I have.

Mr. Grigsby: Now, your Honor, the complaint alleges that the Northern Truck Line was paid \$55,000 odd gross. This instruction would lead the jury to believe that they made a profit of \$55,000. It is in evidence, I think, the profit was about \$6,000 or \$7,000.

Court: No, it is in evidence that the total they received was fifty-four thousand and some.

Mr. Grigsby: The profit on that was approximately \$6,000.

Court: I can correct that.

Mr. McCarrey: It is not in evidence that it was \$54,000.

Mr. Grigsby: Well, the complaint alleges gross and I don't think it would be fair to have it go to the jury that they made a profit of \$54,000.

Court: Quite right. We don't want to deceive the jury. I will clarify the language by inserting the word "gross". I will say "the gross sum."

Mr. Grigsby: I think that is all.

Court: Exceptions will be noted as of course.

(The court then read to the jury the corrections made in Instruction 3-B.)

/s/ ANTHONY J. DIMOND,
District Judge.

[Endorsed]: Filed May 28, 1946. [6]

In the District Court for the Territory of Alaska,
Third Division, Anchorage Precinct

No. A-3036

EARL DUNN,

Plaintiff,

vs.

NORTHERN TRUCK LINES, INC.,

Defendant.

JUDGMENT

This cause coming on for trial before the Court and the jury on the 16th and 17th days of May, 1946, and the plaintiff, Earl Dunn, appearing by his attorney, J. L. McCarrey, Jr., and the defendant appearing by its attorney, George B. Grigsby, and the issues having been duly tried, and the jury having rendered a verdict for the plaintiff in the sum of \$1,500.00 and interest in the sum of \$7.50;

It Is Hereby Ordered, Adjudged and Decreed by the Court that the plaintiff have and recover of the defendant the sum of \$1,500.00, with interest at the

rate of six per cent from the 17th day of May, 1946, in the sum of \$7.50, the amount in the aggregate being \$1,507.50; and that the plaintiff have execution thereon.

Dated at Anchorage, Alaska, this 11th day of June, 1946.

/s/ ANTHONY J. DIMOND,
District Judge.

[Endorsed]: Filed June 11, 1946. [7]

[Title of District Court and Cause.]

PETITION FOR APPEAL

The above-named defendant, conceiving itself aggrieved by the judgment made and entered on the 11th day of June, 1946, in the above entitled cause, does hereby appeal from the said judgment to the United States Circuit Court of Appeal for the Ninth Circuit, for the reasons specified in the assignment of errors, which is filed herewith, and said defendant prays that this appeal may be allowed, that a citation may issue according to law, and that a transcript of the record, proceedings and documents upon which said judgment was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Petitioner further prays that a supersedeas may be granted pending the final disposition of this cause, and that the amount of surety may be fixed by the order allowing the appeal.

Dated at Anchorage, Alaska, June 14th, 1946.

/s/ GEORGE B. GRIGSBY,
Attorney for Defendant.

Service accepted June 14th, 1946.

/s/ J. L. McCARREY, JR.,
Attorney for Plaintiff.

[Endorsed]: Filed June 13, 1946. [8]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Now comes the defendant and appellant herein and files the following assignments or error upon which it will rely in the prosecution of its appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the final judgment made and entered in this cause on the 11th day of June, 1946, by the above entitled court, as follows, to-wit:

I.

That the court erred in overruling the motion of the defendant, made at the conclusion of the evidence, that the court direct the jury to return a verdict for the defendant, said motion being based upon the ground that there was insufficient evidence to submit to the jury to justify a verdict for plaintiff, to which ruling defendant excepted and the exception was allowed.

II.

That the court erred in overruling the motion of the defendant for a new trial based upon the ground

that there was insufficient evidence to submit to the jury to justify the verdict for plaintiff.

III.

That the court erred in instructing the jury as follows:

“To justify a verdict for the plaintiff it is incumbent upon the plaintiff to prove, by such preponderance of the evidence, the material averments of his complaint, namely, that during, or about, the time mentioned and at the special instance and request of the defendant, and for the benefit of the defendant, the plaintiff performed the services and furnished the money, labor, equipment and supplies of the reasonable value of \$1500; that plaintiff has demanded of defendant payment of said sum and defendant has [9] failed and refused to pay the same or any part thereof. If the plaintiff has proved each and all of the material allegations of his complaint, by a fair preponderance of the evidence, then your verdict should be for the plaintiff.”,

to which instruction defendant duly excepted and the exception was allowed.

III.

That the court erred in instructing the jury as follows:

“The plaintiff has offered testimony to the effect that plaintiff entered into an oral agreement with the defendant, the latter acting by and through the witness Chris Haugen, wherein it was agreed that

plaintiff and Haugen should come to Alaska and there seek to obtain trucking contracts for the defendants corporation and that the plaintiff and defendant should share equally in the profits of any contract so obtained; that pursuant to said agreement the defendant secured the contracts which have been introduced in evidence in the trial of this case as Plaintiff's Exhibits Numbers 3 and 4, under which defendant received for the services rendered the gross sum approximating \$55,000.00; that the defendant through its president, denied the validity of said contract and refused to acknowledge it in any way; that plaintiff thereafter brought this action to recover the reasonable value of his services and for money advanced and equipment and supplies furnished by the plaintiff in negotiating said contracts. You are the sole judges of the weight and value of such evidence as well as of other evidence admitted in the trial.

In this connection, you are instructed that if the plaintiff's testimony concerning said oral agreement, and the performance of said agreement on his part and the subsequent rejection and denial of the validity of such agreement by the defendant is true, then the plaintiff is by law entitled to recover from the defendant the reasonable value of his services as well as of any money, material or equipment expended or furnished by the plaintiff in negotiating the said contracts. The fact, if it be a fact, that the original agreement as claimed by the plaintiff, was in the nature of a partnership would not preclude the plaintiff from recovering compensation for the reasonable [10] value of his services and of equip-

ment and supplies furnished by plaintiff and money advanced by plaintiff in carrying out said agreement according to his understanding of its terms.", to which instruction defendant duly excepted and the exception was allowed.

Wherefore defendant and appellant prays that the judgment in the above entitled cause be reversed and the cause remanded, with instructions to the trial court as to further proceedings therein and for such other and further relief as may be just in the premises.

/s/ **GEORGE B. GRIGSBY,**
Attorney for Defendant and
Appellant.

Service admitted June 14th, 1946.

/s/ **J. L. McCARREY, JR.,**
Attorney for Plaintiff.

[Endorsed]: Filed June 13, 1946. [11]

[Title of District Court and Cause.]

**ORDER ALLOWING APPEAL
AND SUPERSEDEAS**

The petition of the Northern Truck Line, Inc., defendant in the above entitled action, for an appeal from the final judgment rendered therein, is hereby granted and the appeal is allowed, and upon petitioner filing a bond in the sum Two Thousand Dollars (\$2000.00) with sufficient sureties and conditioned as required by law, the same shall operate as a supersedeas of the judgment made and entered

in the above cause and shall suspend and stay all further proceeding in this court until the termination of said appeal by the United States Circuit Court of Appeals for the Ninth Circuit.

/s/ ANTHONY J. DIMOND,
District Judge.

Dated June 14th, 1946.

[Endorsed]: Filed June 13, 1946. [12]

[Title of District Court and Cause.]

CITATION ON APPEAL

To the plaintiff, Earl Dunn and his attorney, J. L. McCarrey Jr.:

You and each of you are hereby cited and admonished to appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be held at San Francisco, in the State of California, forty (40) days from the date of this citation, pursuant to the order allowing appeal on file in the office of the Clerk of the District Court for the Territory of Alaska, Third Division, in that certain action pending in said District Court, entitled, "Earl Dunn, plaintiff, vs. Northern Truck Line, Inc., defendant," being No. A-3936 in the files of said District Court, and wherein the Northern Truck Line, Inc., is appellant and Earl Dunn is appellee, to show cause, if any there be, why the judgment rendered against said Northern Truck Line, Inc., should not be corrected and why speedy justice should not be done to the parties in the premises and in that behalf.

Witness the Honorable Anthony J. Dimond, District Judge for the Territory of Alaska, Third Division, this 14th day of June, 1946, and of the Independence of the United States the 171st.

/s/ ANTHONY J. DIMOND,
Judge.

Service admitted June 14th, 1946.

/s/ J. L. McCARREY, JR.,
Attorney for Defendant and
Appellee.

[Endorsed]: Filed June 13, 1946. [13]

[Title of District Court and Cause.]

PROPOSED BILL OF EXCEPTIONS

Be It Remembered:

That this cause came on for trial before the above entitled court, sitting at Anchorage, Alaska, on the 15th day of May, 1946, the plaintiff appearing in person and by his attorney, J. L. McCarrey, Jr., the defendant appearing in person and by its attorney George B. Grigsby, and the following proceedings were had: A jury having been duly impaneled and sworn:

MARSHALL HOPPIN

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

My names is Marshall C. Hoppin. I live at 1246

(Testimony of Marshall Hoppin.)

Eighth Avenue, Anchorage, Alaska. I have lived in Anchorage seven years. In the year 1944, I was Regional Manager of the Civil Aeronautics Administration. I know Mr. Dunn. I met Mr. Dunn in '44, as I recall it, in the early spring. I happened to be working in my garden on Sunday and two gentlemen drove by in a car marked with an Alberta license. They stopped at the corner of Eighth and M and they called to me and asked if I could direct them to Bootleggers Cove Road. So they backed up and I said: "I noticed you have a Canadian license on your car." Mr. Dunn was driving the car and Mr. Haugen was his companion. So I asked them, how did they enjoy their trip over the Highway. They both indicated they had a very fine trip and they had been working on the Highway as trucking contractors. [14]

During our course of conversation I asked them, well, what was their purpose in coming into Anchorage, and Mr. Dunn indicated that they intended to establish a trucking business if there was any business to be had in Alaska.

At that time, the Civil Aeronautics Administration was very much interested in moving materials over the Richardson Highway from Valdez to our respective stations on the Richardson Highway—Gulkana and Big Delta—as well as movement of materials from Fairbanks to Big Delta, Tanacross and Northway. So I was naturally interested in knowing what these gentlemen may be doing and in organizing a new trucking company. They in-

(Testimony of Marshall Hoppin.)

dicated that they had been in business on the Highway somewhere in Canada, so I requested that they come in to see my in my office at their convenience.

Several days later Mr. Dunn and Mr. Haugen came in to my office, and we talked generalities first then we got down to talking about equipment, and Mr. Dunn did most of the talking. He indicated that he was either the president or the manager of the operation. Mr. Haugen was the maintenance superintendent as well as dispatcher, we might call him, I would say. I knew nothing of any partnership arrangement with these gentlemen nor about the ownership of the Northern Trucking Lines, but from the official business that we had to do in moving equipment, I was very much interested in a new trucking company as, at that time, the operations of trucking was at a premium and most of it was being taken up by the Army in the movement of their military supplies. So I requested these two gentlemen to contact our contracting service office—Mr. Simonds and Mr. Fowler.

I did not see them again for several days, when again they came into my office and discussed the fact that they had had certain conversations with my contract and service group, and at that time I asked them about the equipment that they had. As I recall it, Mr. Dunn stated that most of their equipment was in North Dakota, but some was on the highway; and Mr. Haugen mentioned the fact that they had ample resources [15] to obtain the equipment necessary to perform almost any type of haul-

(Testimony of Marshall Hoppin.)

ing. And there was a general discussion of what may occur and the amount of tonnage to be handled. I think that was about all at that meeting.

Then a period of time elapsed and Mr. Dunn called me up and asked me if I could aid him in getting a telephone into his home or office. And if you remember during the war we had a pretty difficult time in obtaining telephones. So I said "certainly, I would be happy to call the City Electrician", which I did and told them that this new trucking firm would probably be doing business with the C.A.A. as well as other firms, and could they possibly aid in giving Mr. Dunn a telephone.

And I heard nothing more from them for a period of time, and I understood that there was a contract awarded to the Northern Trucking Company for hauling of certain materials over the highway. I am unable to recall the figures, because those things are details and I did not pay attention to that, but strictly turned that over to the Office Service Division.

My next contact with them was some months later when Mr. Dunn came in and told me he was having some difficulty.

The first time I met Mr. Haugen and Mr. Dunn, as I said, they asked me for directions to Bootleggers Cove. That was in the fall or spring, I believe. I was out in the garden raking leaves—maybe in the fall. It might have been in the spring—it might have been in January. It was either early in the spring or late in the fall. I can't recall the date

(Testimony of Marshall Hoppin.)

exactly. When they inquired the first time how to get out to Bootleggers Cove, Mr. Dunn was driving the car and Mr. Haugen accompanied him. It was not at our first meeting, but when he was in my office, that Mr. Dunn said he was Manager, or some official, in the Northern Truck Line. Mr. Dunn did most of the talking in my presence. He represented himself as being either President or Manager of the Northrn Truck Lines, but I saw no credentials of either Mr. Dunn or Mr. Haugen. Mr. Haugen represented himself to be the maintenance man, or dispatcher, as well as a partner, in this conversation.

Cross Examination

By Mr. Grigsby:

I stated in my first answer, that I was working in the garden when I had this conversation with these gentlemen when they drove out in a car. It could have been in the month of January. I could have been working in the garden in the month of January. I would not say it was not in that month. Mr. Dunn did practically all of the talking. On each occasion when I saw them together, Mr. Dunn did most of the talking. They did not, in this first conversation, tell me the name of the company. They said they had come up to Alaska to look for a trucking business. They had been working in the Highway in Canada. I had two or three more conversations with these gentlemen after that, in my office. As I recall it, I had altogether three conversations with both of them. It was a few days

(Testimony of Marshall Hoppin.)

after I met them in front of my house, on Tuesday or Wednesday of the same week, that they came into my office the first time. It was probably two weeks after that when I saw them together the next time. I asked them to come up because I was interested in anybody that had these trucking facilities. They just had a general talk with me about their ability to furnish equipment for the kind of hauling wanted done. There was no conversation about any particular contract, we discussed the movement of freight generally between Valdez and Gulkana, Big Delta, Fairbanks, Tanacross, and Northway. There was no conversation in my office with both of these gentlemen about any particular contract for hauling between any definite points. Some months later, I learned that there had been a contract let to the Northern Truck Line. I had nothing to do with that. It was handled by the Office Service Division. I believe there were bids advertised for in connection with that contract. I do not know of anything that Mr. Dunn had to do with that particular contract. I have been acquainted with Mr. Dunn since then, have seen him on several occasions.

Redirect Examination

By Mr. McCarrey:

In that conversation relative to the trucking of freight, the [17] hauling of freight from Valdez to Gulkana and Northway was discussed. We were interested in the movement of freight. I talked

(Testimony of Marshall Hoppin.)

about the movement of freight up to those points with Mr. Dunn and Mr. Haugen.

Recross Examination

By Mr. Grigsby:

At that time there had been no contract let, nor no bids. There was the possibility of that kind of contract, and thereupon,

MARCUS McDEVETT

called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. McCarrey:

My names is Marcus McDevett. I live at 807 H Street, have lived in Anchorage since June of '43, except for an interval of five or six months in '44 between May and November. I work for the Morrison-Knudsen Co. I am the Office Manager for the Morrison-Knudson Co., taking care of all office routine. I was so employed in May, 1944. If a contract were let with my organization, I would have knowledge of it, also if any payment were made thereon.

Yes, I can identify the document you have handed me. It is a statement of the payment made by Morrison-Knudsen Co. to the Northern Truck Line for freighting of materials and supplies from Anchorage to Northway. This whole group of instruments represents the business we had on that one transaction with the Northern Truck Line. (Group of

(Testimony of Marcus McDevett.)
papers admitted in evidence and marked Plaintiff's
Exhibit No. 1.) The witness continuing:

This exhibit is the contract the Northern Truck
Line had with us.

Cross Examination

By Mr. Grigsby:

That contract had nothing to do with hauling of
the C.A.A. We were contractors operating under
the C.A.A. We had our own camp there at North-
way and it was our obligation to get our own sup-
plies from Anchorage or Valdez to Northway. The
Morrison-Knudsen Co. had a contract with the
C.A.A. for construction of an air base at Northway.
In [18] connection with our contract under the
C.A.A., it was necessary for us to transport our
materials and men and supplies to the job site, and
we hired the Northern Truck Line services in that
respect. I did not have anything to do with the
employment of the Northern Truck Line. Mr.
Steelman, who was then General Superintendent
for Alaska, negotiated that. I know the agreed
price of the contract. I know Mr. Dunn was one
of the gentlemen he negotiated with. Mr. Dunn was
in the office. I don't recall Mr. Haugen. I did not
know any of the internal working of their organiza-
tion, thereupon,

J. M. FOWLER

called as a witness on behalf of Plaintiff, being first
duly sworn, testified as follows:

(Testimony of J. M. Fowler.)

My name is J. M. Fowler. I live at 3rd Avenue and East E, have lived in Anchorage since December '43. My title is Chief of Contract and Procurement Section of the C.A.A. I was employed in a similar position during January of 1944, was working in the Contract Section at that time. I know Mr. Dunn and Mr. Haugen. I met them shortly after they had made their contacts with Mr. Hoppin. That was undoubtedly in the spring of '44. I am not certain of the month. It was in the early part of '44. When they came to see me they were out to get any trucking business they could. We had a conversation with them at that time with reference to trucking. I was in on several conversations with them. Mr. Hoppin always referred matters of that kind direct to our office. We put them on the bidders' list for any future trucking as the Northern Truck Line. They were representing the Northern Truck Line and we dealt with both of them. Both Mr. Haugen and Mr. Dunn represented themselves to be a part of the Northern Truck Lines. I believe there were two contracts let to the Northern Truck Lines that year. These contracts were let out on bid, advertised, and everyone had an equal opportunity, and the contract was awarded to the low bidder. The document you hand me is the bid that was submitted by Northern Truck Lines. That was the bid upon which the contract was awarded, as a result of having been accepted. This is their first quotation, and a [19] formal contract was entered into on the basis of this quotation.

(Testimony of J. M. Fowler.)

(Document admitted in evidence as Plaintiff's Exhibit No. 2.)

Witness continuing: Witness reads from first page of Exhibit No. 2 as follows:

"Bidder 'Northern Truck Line, incorporated in the State of North Dakota, Anchorage, Alaska', bid signed by 'Earl Dunn, General Manager, by Chris Haugen, Managing Director'".

Witness continuing:

The document you hand me is a formal contract that was entered into with the Northern Truck Lines on the basis of their low bid.

(Document admitted in evidence and marked Plaintiff's Exhibit No. 3.)

Witness continuing:

I can not ascertain from that contract how much was paid the Northern Truck Line. I believe that was asked for separately and I think Mr. Chambard brought that down.

(Witness is handed a document and asked to identify it.)

Witness continuing:

This is the other formal contract that was entered into that season as a result of a bid. There were two bids and two contracts, I believe, entered into by the C.A.A. with the Northern Truck Lines, Inc.

(Contract admitted in evidence and marked Plaintiff's Exhibit No. 4.)

(Testimony of J. M. Fowler.)

Witness continuing:

The hauling under this contract was completed. So far as I know, the Northern Truck Line was paid for that. As far as I am concerned, as representative of the contract section of the C.A.A., the contract was completed.

Cross Examination

By Mr. Grigsby:

The date of the contract, Plaintiff's Exhibit No. 4, is June 15th. The contracts are on an estimated basis and so much a ton mile and then the actual orders under that contract are issued from time to time as the hauling is required. This contract was not for the fiscal year 1945 [20] entirely. Exhibit No. 2 was the bid upon which that first contract was let. The bids, as I recall, were both taken about the same time, though they covered different areas. The contract was given to the Northern Truck Line as stated in the contract and also in the bid.

Q. And Mr. Dunn represented to you that he was General Manager of the Northern Truck Line?

Q. Was Mr. Haugen present at the time he made these representations?

A. Of course they were in so many times and we weren't too much concerned until after the actual formal contract was entered into just who they were. They were eligible bidders and we accepted their bid and when the formal contract was entered into, I think Mr. Haugen signed the formal contract.

I do not recall whether this bid was submitted

(Testimony of J. M. Fowler.)

by mail or personally. At that time we were handling them on a negotiated basis. They weren't necessarily sealed bids but I don't recall how they came in. The contract was let specifically as a result of that bid.

Cross Examination

By Mr. Grigsby:

I brought Exhibit No. 2 with me this morning. That is a part of the official files. It was in the custody of my office, has been there all the time since that bid was submitted. No person has had access to it that I know of. When it was originally submitted, I assume it was brought in personally. Most of these truckers did bring them in personally and hand them to the clerk in the office. I wouldn't recollect who did. That is the original bid, on which the contract was let. I think there were two bids by the Northern Truck Line introduced this morning. Not for this job of work that I recall. I don't believe any bids were rejected and readvertised. It is hard to recall the detail of a routine transaction that long ago. As far as I know, this is the only bid on this particular haul. Those forms are available to any qualified person or they are available to the public in general, and a copy is posted in the office. They are available to the public, to anyone interested [21] in the business, and also a copy is posted in the Post Office. They are public bids. Anyone that comes into the Post Office may come up and ask for a form to make a bid. I do not recall who called for that form. You see, we have a

(Testimony of J. M. Fowler.)

bidders' list. If anyone on our bidders' list came up and said he wanted a form and the conditions, we would hand him that. I do not remember to whom, representing the Northern Truck Line, I did hand it to. It was probably mailed out originally. The form was mailed out to what bidders we had on the list and I am sure Northern Truck Lines was on our list at that time. The bidders fills in this part (indicating), and of course this quotation, and any comments he may have.

Q. Well now, is there ever an entry on the bid accepted by the Government?

A. Oh, an informal bid—sometimes we make the contract right—acceptance right on that form.

This is an informal bid and we entered into a formal contract on the basis of that. There is no acceptance. The acceptance is in the contract. We would fill that in on an informal contract but this was a formal contract because a bond was required and it was entered into on a formal contract form, which you have in the other exhibit. This is an informal bid. A formal bid would be a type of form, really, that requires more formality and it is for use in the larger bids. Where there is a performance bond required, we use a standard form.

The length of time after a bid is put in, before we award the contract, varies. On that particular one, you can tell by the form of contract you have there. I have not compared the bids.

Q. May I see the other exhibits?

Well, this contract is Exhibit No. 4, is dated June

(Testimony of J. M. Fowler.)

15th, and Exhibit No. 3 is dated April 15th. Now, on the body of those contracts, they appear to be identical, are they not?

A. One contract is hauling out of Valdez and the other is for hauling out of Anchorage to highway points. [22]

Those are the two contracts and they are tied in with the two informal quotations there.

Q. I notice this contract of April 15th, Exhibit No. 3, is signed by John P. Meadors, President and General Manager of the Northern Truck Line. Did you meet Mr. Meadors?

A. Yes, sir. I don't recall where Mr. Dunn was at that time. I know Mr. Dunn. I have known him since that spring when he first came into the office. I have seen him around. He submitted other bids.

Mr. Grigsby: May I make this witness my witness to save recalling him?

Mr. McCarrey: That is quite all right.

Court: Very well.

Direct Examination

By Mr. Grigsby:

Q. How long have you known Mr. Dunn, the plaintiff? A. Since the spring of 1944.

Q. And in Anchorage? Only? A. Yes.

Q. Do you know what his general reputation has been in Anchorage and vicinity during the time you have known him for truth and veracity?

Mr. McCarrey: In this respect, I object thereto

(Testimony of J. M. Fowler.)

because the attorney has not qualified Mr. Fowler as to being well enough acquainted with him.

Court: That objection is not good, I think, but the witness, Mr. Dunn, hasn't yet testified.

Mr. Grigsby: I asked if I could make him my witness out of order.

Court: Is Mr. Dunn to testify?

Mr. McCarrey: He is.

Court: You may answer.

Q. Just, do you know what his general reputation, in Anchorage and vicinity—what it has been since the time you have known him?

A. We have various stores come to us in an official capacity.

Court: Well, the question is——

Mr. Grigsby: The question is, do you know his general reputation in Anchorage and vicinity?

A. I know what has reached me in my position.

Q. What is that?

A. I know what has reached me in the position I am in.

Q. I didn't hear?

A. No, I say, I know what has reached me in the position I am in at C.A.A.

Q. Well, the question is: Do you know his general reputation? A. Yes, I suppose I do.

Q. Is it good or bad?

A. Well, it is not good.

Mr. Grigsby: That is all.

Mr. McCarrey: I would like to ask a question,

(Testimony of J. M. Fowler.)

if it please the Court. I would like to cross examine on this last.

Court: Yes, you may do so.

Mr. McCarrey: Thank you.

Cross Examination

By Mr. McCarrey:

Q. Mr. Fowler, how has this information come to you, as to Mr. Dunn's veracity?

A. From various other Government agencies and, of course, the truckers, which we always took with a grain of salt from other truckers, but—

Q. That isn't any personal dealings yourself, then? A. No; no, I have no—

Q. Just information that other people passed on to you?

A. Or that we have received in regards to contracting work from other Government agencies.

Mr. McCarrey: Thank you.

If it please the Court, on redirect examination, again, through an inadvertency, I have another bid which I would like to introduce.

Court: You may submit it to the witness for identification.

Redirect Examination

By Mr. McCarrey:

(Witness is handed a document and asked to identify it.)

Witness continuing:

This is a bid by the Northern Truck Line. [24]

Q. And will you please read to the Court and

(Testimony of J. M. Fowler.)

jury by whom that was submitted and by what authority it was alleged to have been the bid of the Northern Truck Line for this contract?

A. This is submitted by Northern Truck Line, Incorporated in the State of North Dakota—

Mr. Grigsby: Don't I get a chance to examine and object?

Mr. McCarrey: Yes, if it please your Honor and Mr. Counsel.

(Mr. McCarrey hands document to Mr. Grigsby.)

Mr. McCarrey: I understood the counsel just disapproved and didn't object to these things.

Mr. Grigsby: May I see that other bid?

Court: Is there objection?

Mr. Grigsby: I would like to ask a question.

Court: You may inquire.

Mr. Grigsby: I will hand you both these bids and as you: Are you familiar with handwriting, generally? You have seen lots of handwriting? Haven't you? A. Well, yes.

Mr. Grigsby: And writing done with pen and ink? A. That's right.

Mr. Grigsby: You have an ordinary acquaintance with handwriting done with ink, by means of a pen?

A. Yes, sir.

Mr. Grigsby: Will you state whether or not the word "Earl Dunn" and the word "Chris Haugen" are written with the same ink?

A. No, that's different ink.

(Testimony of J. M. Fowler.)

Mr. McCarrey: Is counsel wishing to qualify this witness as an expert?

Court: Is there objection?

Mr. McCarrey: Well, if the counsel will qualify him—

Court: Well, never mind that.

Witness: Your Honor, I understand I was subpoenaed down here to bring the official files. I wonder if I am not—

Mr. Grigsby: Not a handwriting expert—

Witness: —getting questions on things I wasn't brought down here for. [25]

Court: You are required to answer anything relevant within your knowledge, and the Court decides the relevancy. The proffered exhibit may be admitted in evidence and marked Plaintiff's Exhibit No. 5.

Mr. McCarrey: Thank you.

Court: This is a bid—what date?

Mr. McCarrey: May I ask that the witness be handed both the contracts and bids?

Court: Witness may be handed Exhibits 2, 3, 4 and 5.

Mr. McCarrey: Thank you.

Court: You may proceed.

Mr. McCarrey: Now, Mr. Fowler, this last exhibit which was given to you and which you identified, was that the bid submitted by the Northern Truck Lines upon which the formal contract, No. 2, or the later contract in date, was issued by your office? A. Yes.

(Testimony of J. M. Fowler.)

Q. Now, Mr. Fowler, I think you have, through defense counsel here, testified that you were in charge of these instruments in your office—in other words, you had control of them.

A. That is true.

Q. And to your best knowledge and belief, these documents that you have are the ones originally submitted to you?

A. Yes, these are the originals.

Q. You don't think, then that Mr. Dunn may have come along and put these in to win this law suit? A. No, sir.

Mr. McCarrey: That is all.

Court: You may cross examine, Mr. Grigsby.

Recross Examination

By Mr. Grigsby:

I wouldn't be sure without checking the files that any bids were ever filed in my office by Mr. Dunn himself. I believe he submitted a bid since that date, and thereupon,

W. H. CHAMBARD

called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

Direct Examination [26]

By Mr. McCarrey:

My name is W. H. Chambard. I live at 325 L. Street, Anchorage, Alaska, have lived in Anchorage since September, 1939. I am employed by the Civil Aeronautics Administration at Anchorage, Alaska.

(Testimony of W. H. Chambard.)

I am Chief of the Accounts Section. As such, I would have knowledge of all expenditures made on contracts. I recall having had an expenditure made by the C.A.A. to the Northern Truck Line. Those documents you hand me are purchase orders that were issued to the Northern Truck Lines as the result of the contracts that have been submitted. Also, I have our payer's card record indicating each individual payment, and then I have tapes here that I totaled up the payers cards to get the total amount paid on each contract to the Northern Truck Lines. Those papers are part of the original official records of the C.A.A. Anchorage office. I have been in charge of those instruments. They have been entered in the regular course of business. Without my knowledge or without my consent, they have never been out of the office.

(Document admitted in evidence and marked plaintiff's Exhibit No. 6.)

Witness continuing:

According to our records on contract No. 1429, which covered hauling out of Anchorage, it came to \$7,739.95, and contract No. 1437 covering hauling out of Valdez came to \$47,185.99, making a total of \$54,925.94. The \$47,185.99 was on contract No. 1437 which was the big contract covering hauling out of Valdez. Checks were issued in the total amount of that sum. In other words, the Northern Truck Line has been paid in full as a result of these two contracts.

(Testimony of W. H. Chambard.)

Cross Examination

By Mr. Grigsby:

I have no idea what the company made out of that as a profit.

Redirect Examination

By Mr. McCarrey:

We do not keep track of what these companies make on these contracts, and thereupon,

J. M. FOWLER

heretofore duly sworn, resumed the stand for testi-money for and in [27] behalf of the defendant.

Direct Examination

By Mr. Grigsby:

(Witness is handed two papers.)

Witness continuing:

These papers are bids that were received last season from Earl Dunn, which you requested me to bring in this morning. They are signed by Earl Dunn. Two different bids.

(The two papers were admitted in evidence as Defendant's Exhibits A and B.)

Witness continuing:

These bids are submitted through the office that I am in charge of. There is no expense to the applicant in filing these bids. None that our office would require. The applicant does not have to furnish any labor other than whatever it takes to arrive at his bid. The plaintiff, Earl Dunn did not

(Testimony of J. M. Fowler.)

furnish any money, labor, equipment and supplies in procuring any contract that was made with the Northern Truck Line. Not to us, and thereupon,

EARL DUNN

a witness in his own behalf, having been theretofore sworn, testified as follows:

Direct Examination

By Mr. McCarrey:

My name is Earl Dunn. I reside at 710½ East Tenth, Anchorage, Alaska. I have resided in Anchorage, Alaska since '44, with the exception of short periods that I was away from the city. That has been my address since '44. In the year 1943, I was located at Dawson Creek on the Alcan Highway and was in the business of trucking. At that time we hauled for Ray Jewell. My brother was in partnership with me and he had some trucks with Mr. Spinney and I had some with Ray Jewell. I was doing trucking work on the Alcan Highway. I know the defendant, Mr. Haugen. I first met him in Dawson Creek in the latter part of the summer of '43. Dawson Creek is just a village that grew up with the [28] Alcan Highway and I was crossing some vacant property and observed a man working at a truck. Well, having trucks myself, I stopped and asked him what was wrong. How things were going. He was having difficulty with the brakes, so I give him some of my experience with them and he required a part for them and I told him if he

(Testimony of Earl Dunn.)

would come over to our shop that I had some spare parts. That was the brake cylinder for the wheel and I had some extra ones in our shop. We maintained a shop there. My brother and I operated three trucks, a GMC, an International, and a Ford. One carried 2,000, or 25 gallons; the other one was probably 1800 and the next 1800, too. They were bulk tankers for hauling fuel and gasoline in bulk. I had been doing that type of work along the Alcan Highway. That was any type of liquid fuels—whichever the Army wanted transported. We started that early in the Spring—it was the winter of '43. We had been hauling bulk oils the year 1943, and liquids for the Army. I had occasion to see Mr. Haugen quite often because of our trucking and because his place was between ours and uptown —up to the village. Mr. Haugen was trucking and there was more than one truck sitting around the yard. There was an International, one was a Chevrolet, and one was a Federal. Those trucks were constructed to haul bulk oil. He had been doing similar work to the type I had been doing, for another contractor. I saw Mr. Haugen quite frequently. In the latter part of 1943, the work was just tapering off. The road was practically built and there was very little hauling. It was quite difficult to get a trip or load. The prospects looked worse for 1944. The work was pretty well completed in 1943. On several occasions, Mr. Haugen mentioned to me that if he could just get up to Alaska, he knew that he could get considerable haul-

(Testimony of Earl Dunn.)

ing. That conversation was in the late fall and early part of the winter and he said that he heard that George Nehrbas—in fact, I believe he said he was acquainted with him—in Fairbanks—now, I didn't know anybody in Alaska because I had never been there—and if he could get up there, why, he could contact Mr. Nehrbas. So this went on for some time and he asked me if I could take him up. I had a car and after some negotiating and further conversations, I said I could and the final agreement [29] was, by about the time we started, that should any work be found, we would divide it between us and be in partnership. That final agreement would be along about December when we discussed it more often. There was really nothing at all to do then. I had never been to Alaska before and I didn't know anybody in the Territory. Mr. Haugen asked me if I would take him to Fairbanks. The terms and conditions under which we were going to Fairbanks, and the reason for going to Fairbanks, was that if he could get any hauling up here, any profits that might be made, we would divide between us. We both had equipment. My brother was present at different times when we had those conversations. Nobody else. My brother died on the plane here last fall. Yes, we went to Fairbanks—in my car, a Plymouth Sedan. I took Mr. Haugen with me. Mr. Haugen did not have plenty of money when he left. He asked me to loan him some money, \$75.00 to just pay his own personal expenses. I loaned him that money. He paid back

(Testimony of Earl Dunn.)

part of it. After we went to Fairbanks, he went in to see a gentleman by the name of Mr. Nehrbas, who operates the U-Drive and sells trucks, cars. I did not talk with Mr. Nehrbas at all. He was Mr. Haugen's friend. Mr. Haugen came out after talking to Mr. Nehrbas and said there wasn't anything doing up here, but that Mr. Nehrbas said he should go over to Anchorage—there might be some work there. We came to Anchorage. I brought Mr. Haugen with me in my car. We arrived in January, and the latter part of the week, 1944. It would be after Wednesday. We were only here two or three days and apparently he could not find any work, so he became discouraged and wanted me to take him back to Dawson Creek. I stayed at the Lind-Dudley Hotel. Mr. Haugen stayed in the same room with me. We each paid our own expenses. He did not buy any gas on the trip, nor fix any tires. On the Sunday morning I refer to, we decided to drive around the outskirts of the city before we started back, and, driving down one street, I observed a man out in the front yard, so I started to slow up. Mr. Haugen wanted to know why I was stopping. "Well," I said, "there is a gentleman I think I would like to talk to. He looks like a business executive." So I stopped, and the latter turned out to be Marshall Hoppin we held conversation with. He was not raking leaves at that time. He was shoveling [30] the snow off his path. While we were talking to Mr. Hoppin, we remained seated in the car and Mr. Hoppin came over to the car.

(Testimony of Earl Dunn.)

Mr. Haugen heard what the conversation was. The conversation was in relation to any trucking that might be up here and Mr. Hoppin was interested and told us to come up and he could go in further to it in his office. He said that there was a shortage of trucks here and they would be letting contracts. I told Mr. Hoppin that I and Mr. Haugen had some trucks at our disposal and were looking for contracts. As a result of this, Mr. Hoppin asked us to come to his office. We went up to his office. It was either Monday or Tuesday morning we went up. It was shortly afterwards. Mr. Haugen went up with me. Mr. Haugen did not enter into the conversation very much. After we went up to Mr. Hoppin's office, the conversation I had in Mr. Haugen's presence with Mr. Hoppin was in the matter of how and in what way they were going to transport this bulk fuel to various stations. They were just then wanting to change over from drums and there was a shortage of tankers up here, and so they just wanted—went into it to see if we could haul the oil in bulk. I told Mr. Hoppin that between us we had sufficient number of trucks to haul that quantity of oil.

When I was talking to Mr. Hoppin, I represented myself to be the Manager of the Northern Truck Line. Mr. Haugen had no objection to that. I was not trying to get the contract for myself. I was only getting it for the Northern Truck Line. That was our agreement when we were discussing it in Dawson Creek. Mr. Haugen said they already had

(Testimony of Earl Dunn.)

bills printed and they had been in operation in North Dakota and in that manner, we could go on using the stationery. All the way through, it seemed quite all right with Mr. Haugen for me to represent myself to be the Manager and I did so. We may have went up once more to see Mr. Hoppin before I took Mr. Haugen back home. He still wasn't very sure that we would get any work to do so he asked me to take him back down again to Dawson Creek. That is about 1700 miles. I took Mr. Haugen back there at his request. I was to take him back down, when he could do some work on the equipment and then come right back up and remain here [31] in the city so that whenever the C.A.A. wanted further information, I would be right here so I could contact them. Mr. Haugen understood that. I was still representing myself to be Manager of the Northern Truck Line. At no time did he ever object to that. It probably took two or three days to arrive back with Haugen in Dawson Creek. It was in January—the latter part. After I arrived back in Dawson Creek, I did have further discussion with Mr. Haugen about the C.A.A. contract and with my brother, in Mr. Haugen's presence. The understanding was that I would come back up here and remain here so as I could take care of what business might turn up and if I could promote any more business, why I would do it, which I did. I came back. I stayed down there only a day or two. I came back the second time in my passenger car, directly to Anchorage. Upon my return to Anchorage

(Testimony of Earl Dunn.)

age, I started making contacts around the city and eventually I succeeded in getting the hauling of the Morrison-Knudsen Co. That was the contract that Mr. McDevett referred to this morning. I came back alone when I came back. Morrison-Knudsen told me we could start hauling as soon as we got the trucks up here. I wrote a letter to Mr. Haugen and asked why the trucks weren't up here. It took them considerable time before they got them in shape for the travel, and serviced. I had a truck of my own brought up here. It came up at the same time that Mr. Haugen's trucks came up. That would be close to March because I was here most of the month of February alone and then I started back to Dawson Creek to see if I couldn't hurry the trucks up a bit because Morrison-Knudsen had the freight here and they wanted it hauled, and I met them on the way up this side of Whitehorse. When I say I met them, I have reference to my own truck was coming up. One of our drivers was bringing it up. The driver was paid by my brother and myself. They were operating our truck. At that time I believe Mr. Haugen had a Chevrolet; there was a Chevrolet, there was a Dodge in there too, and an International belonging to Harry Tido. It was also coming up. Harry Tido was coming up in conjunction with the same contract. He worked on the contract when he came up here. He was to [32] be paid just some 20% less than what the contract would bring. As it turned out, I believe it was around 12c a mile that he got. There were two Northern Truck

(Testimony of Earl Dunn.)

Line trucks brought up. Two of their own trucks, and they came up the same time that I had my truck brought up. I paid our own driver for bringing our truck up. When those trucks arrived, I put them to work on this Morrison-Knudsen contract. To my knowledge, Mr. Haugen never went to have a conversation to get that contract with Morrison-Knudsen. I obtained that on my own for the Northern Truck Line. My truck participated in that contract to the extent of two loads. It may have been three. It was either two or three loads. I received the money for hauling that. I got the money from the Northern Truck Line. The original check was handed to me by Mark McDevett. It was written out to the Northern Truck Line. I brought the check into town and gave it to Mr. Meadors, who represented himself to be the President of the Northern Truck Line. This check was given to me about the latter part of May and some days later, I gave the check to Mr. Meadors and they, in turn, paid me for that. It may have been close to \$600.00 I got out of that. I had to absorb my own expenses. I did not drive personally on that job. After my return trip from taking Mr. Haugen to Dawson Creek, I was looking around for additional contracts. That is something that you just can't go in the store and buy over the counter. It takes considerable time for to make contacts when you are a stranger in the city and I was up on numerous occasions discussing the bulk oil situation with Mr. Stone. I believe he is the Chief of the

(Testimony of Earl Dunn.)

Maintenance for the C.A.A. The office told me Mr. Stone is now in the States. I had conversations also with Mr. Fowler, but principally we were concerned in trying to improve the distribution of bulk oil to the Civil Aeronautics Administration and that conversation was principally with Mr. Virgil Stone. I believe that one contract—I signed the bid along with Mr. Haugen for one sometime in March, I believe—about the second week in March.

(Plaintiff's Exhibits Nos. 5 and 2 are handed to the witness.)

Witness continuing: [33]

I can identify those exhibits 5 and 2. These were the invitations issued to the trucking public to bid on the hauling of freight—general freight and bulk fuel. My signature appears thereon on both of them. It is in my own handwriting. I made all notations that is on those bids and Mr. Haugen signed his name. That was all that he done with them. There were some notations that was made. I discussed those with Mr. Haugen. It was perfectly all right for me to sign my name as Manager and I do appear as Manager on both of them. Those were the same bids that I submitted to the C.A.A. that the Northern Truck Line received a formal contract for. I know that because it specifies the moving of the same freight to the same stations and at the same price that the contractors awarded it to them on. I did most of the speaking when Mr. Haugen and myself used to go down to see Mr.

(Testimony of Earl Dunn.)

Stone and Mr. Fowler. Mr. Haugen wasn't with me all the time. He wasn't even up here. He came up here towards the last, but during the negotiations with the maintenance chief I was up seeing him a number of times to answer various requests and information that he wanted. I believe those bids were submitted at different times. They are dated differently. I made both of them out. They are for two different contracts. Those bids were submitted after the trucks arrived. I believe Mr. Haugen took these bids down to the Civil Aeronautics office after lunch on the first of April in '44 and the trucks came up in March. They had been hauling for Morrison-Knudsen. I remember that the first day of April was the time that they were to be opened and I know that I just arrived back in time to fill them out and Mr. Haugen took them down that day. I was out of the city on the last two days of March. My understanding with Mr. Haugen from the Northern Truck Line at the time those bids were submitted and we filled them out was that we would do as much hauling as we could ourselves and any trucks that was hired and any profits that would be made, that we would divide them. That was the understanding at the time I submitted those bids. Mr. Haugen didn't object to that. Mr. Haugen represented himself to me to be a partner in the Northern Truck Line; that he was partner with [34] the Northern Truck Line and that he could do business in the name of the Northern Truck Line. I had never met any other members of the Northern

(Testimony of Earl Dunn.)

Truck Line until after the contract was awarded to them. As far as I was concerned, Mr. Haugen had ample authority to represent the Northern Truck Line and to authorize me to go out and get contracts. There never was any question to the contrary. After these bids were submitted and the formal contract was offered to the Northern Truck Line, we went up to the office to sign for the contract and when I went to sign on the contract—it may have been a week elapsed after these bids were put in before the contract was let. A week later, I was called up to the office by Mr. Stone. He wanted a little further information about the hauling of the oil and I made a notation and initialed it, about the cleaning of the drums that was. That was prior to the time I went up to sign the contract. I did go up to Marshall Hoppin's office to get a telephone. That was in the spring. I had the telephone put in my house. I paid for it but put it in under the name of the Northern Truck Line. That was before the signing of the contract. It was some time after the trucks arrived. I went ahead and got this telephone and put it in the name of the Northern Truck Line.

When we were called up to sign the formal contract after it had been awarded, Mr. Haugen and myself went up to the office; and so, when I come to sign on the contract, they asked me by what authority I had for to sign. And I said that we were partners in it. Mr. Haugen had a slip of paper, which I didn't see what was on it, apparently authorizing that he was the one to sign for the

(Testimony of Earl Dunn.)

Northern Truck Line. They wouldn't accept my signature. They said that just a verbal agreement wouldn't be sufficient authority in dealing with a contract of this size. Miss Hasler of the C.A.A. was the party that objected to that. She was transferred last year. She was the party that said I had to have some written authority. So Mr. Haugen, in my presence, signed the contract for the Northern Truck Lines. That was satisfactory as far as the C.A.A. was concerned. There was no objection thereto.

Well, we went back out again and there—he was still agreeable that I would go on and share in the business, but in a short time there [35] was another gentleman arrived up from the States. He was Mr. Meadors. I never had heard of this man, Mr. Meadors, before. He represented himself to be the president of the Northern Truck Line. I had a conversation with him in the presence of Mr. Haugen. He said that he would manage the business. That Mr. Meadors would manage the business while he was here and when he wasn't here, Mr. Haugen would; that Mr. Haugen had no business making any arrangement with me. I discussed with Mr. Meadors and Mr. Haugen—in Mr. Haugen's presence—the arrangement I had. Mr. Meadors just didn't say I could have any share at all in the profits. After that, well, all contracts were let and I asked on several occasions about doing a little hauling. I asked Mr. Haugen.

Q. Did you ever ask Mr. Meadors?

(Testimony of Earl Dunn.)

A. He left right away to go back to the States.

Witness continuing:

I asked Mr. Haugen personally. He just didn't have a load any time I asked. I did that on several occasions. The answer each time was he didn't have any load that day. It was September before I finally got started hauling for myself. It would be from May until August—through August, when I made these requests to Mr. Haugen. I went to Mr. Haugen on more than one occasion and requested a haul. He never had a load for me. I started to look around for work for myself. All seasonable contracts had been let so far as I could find out, for some time. Eventually I did contact one of the men in the Army at the USED and from them I did get a contract for hauling rails. That contract was let—we negotiated in June but there was nothing that could be hauled until after July. A bridge went out and they couldn't get the rails up to their destination. And then when I had gathered up my equipment and arranged for some more, they decided not to haul the rails. So then they didn't decide to haul them again until away long in September, and I spent all summer endeavoring for to get some work to do. I had to get some work because I had—by June I had used nearly \$2000 of money beyonging to myself and my brother in my expenses. I had been—for six months there had been no money coming in—that I had earned no money—and in July I needed more money to carry on, and I had to borrow \$1200 here in the city. [36] I did borrow

(Testimony of Earl Dunn.)

some from Thomas Bevers. I gave security for that, one of my trucks in the form of a first mortgage. It cost me nearly \$3000 dollars before I had made any money. This dates over a period of nearly eight months. A car costs considerable money to operate. I leased a house, which was just as expensive as hotel bills. The first work I had when I made money other than that short haul for Morrison-Knudsen, was in September of 1944.

Cross Examination

By Mr. Grigsby:

My first trip to Alaska was in 1944. I am a citizen of Canada. I was born in Canada. I am 47 years old. I was as much in one country as the other, that is, Canada and the United States. I mean the United States proper.

Q. How many years did you serve in the penitentiaries in Canada?

Mr. McCarrey: Now, if it please the Court, under the rules of evidence in the Territory of Alaska, that question is not proper and I ask it be stricken.

Court: Objection sustained.

Witness continuing:

I was convicted of a crime in Canada and served a term in the penitentiary for it. The crime was theft. I was convicted several times for theft in Canada and served terms in the penitentiary twice for it. I did plead guilty here in the Commissioner's Court last December for larceny of Govern-

(Testimony of Earl Dunn.)

ment property and paid a fine of \$300.00. Mr. Haugen never showed me any authority under which he had a right to make me manager of the Northern Truck Line. He never showed me any written paper. I knew him up at Dawson Creek. They had a sign up there, only on their equipment. That was the Northern Truck Line. Mr. Haugen was conducting some freighting there with trucks with that sign on them. I do not know in what capacity, except that he was managing the work. I said that I and my brother had some trucks there. I said I had an International. I did have an International. I did not have a Chevrolet. [37] I had a GMC, International and Ford. They belonged to my brother and myself. Two of them were purchased in Canada and one was purchased in the States. It was built to order. The GMC was purchased in the States. The Ford was purchased in Dawson Creek, Canada. One was destroyed in a collision. The one that come here was purchased in Dawson Creek. It was a Ford. It was purchased right in Dawson Creek. I would have to send back and get the papers that my brother purchased it from. I didn't actually but that truck. It certainly was not a government truck. I did some work on that Knudsen contract with that truck took a load to Northway. He was to pick up a load at Whitehorse and take it down to Dawson Creek, and I believe he did it.

Q. Don't you know that was seized by the gov-

(Testimony of Earl Dunn.)

ernment and taken back to Dawson Creek as government property?

A. It was released—it was not seized and it was released and everything. There was plenty of evidence to prove that there was nothing wrong with any of the equipment.

Witness continuing:

The truck was operated out of Dawson Creek until the shop burned down, only a year ago. There was not a trial over it. There were many trucks stopped on the highway. This one was not seized ever while I was with it. I do not know except by rumors, that it was seized. My brother did not rumor it to me. He was not arrested in connection with it, nor I was not arrested for any other theft of government property.

Q. Nor your brother?

A. Yes.

Witness continuing:

I am sure that I brought Mr. Haugen here from Fairbanks in January of '44, in a car. I had no trucks here at that time. Before I left Dawson Creek with him, I had entered into a verbal contract with him that any hauling either of us got in Alaska, the profits would be divided equally. At that time he represented himself as being connected with the Northern Truck Line and it was agreed that everything would be done in that name and that I would be manager. From that time on, as long as I had any dealings with Mr. Haugen, I held myself out as manager [38] of the Northern Truck

(Testimony of Earl Dunn.)

Line, Inc., with his permission, when he was with me. Yes, and when he wasn't with me I did.

Q. And were you manager?

A. I was obtaining the contracts.

Witness continuing:

I considered myself a bona fide manager of the partnership. Yes, of the Northern Truck Line, Inc. With his permission I was an officer of that company and I represented myself as such to other people. I considered myself, in good faith, the manager.

We was—the profits was to be the salary. Our arrangement was to share the profits. Salary was never brought up for him or myself. We were to share profits equally. I represented myself as being the Northern Truck Line. That was with the best of sincerity on my part. I was the manager of the Northern Truck Line, Inc., in Alaska, appointed by Mr. Haugen. He didn't show me any authority under which he had power to appoint me, other than all his stationery was marked Northern Truck Line. He received letters and sent them out on Northern Truck Line stationery. He had stationery and he had trucks. He did work for the Northern Truck Line, Inc., and that's all. I brought two trucks to Alaska and I purchased two here. I bought two trucks from agents of the Ford Motor Company, Mr. Hoyt and Mr. Barret of Fairbanks. I did that last year, in '45. No, I did not buy trucks in 1944. There was no work for the trucks I had here. I

(Testimony of Earl Dunn.)

came down in a car. Later some of the Northern Truck Line trucks came down and one truck of mine, a Ford. That was not the only truck I ever had that was here in '44. The GMC was here. It arrived here in May, the latter part. I stayed here all that summer. I negotiated a contract with the government for hauling some steel rails. My bid was accepted some time in June. I was here in June. I was away from here in June. I went back to Dawson Creek. I was in Fairbanks in June. I was trying to get equipment to perform that contract in Fairbanks and to hire men. I know Pop Miller. I saw him in Fairbanks. I tried to hire him to furnish some trucks for that contract I had with the government. That was sometime in June. He did not say that that time that he was hired out to the Northern Truck Lines and couldn't go to work for me. He said he was just waiting for word to see if they would get the contract. [39] They had great difficulty trying to get anybody to furnish sureties for them. Yes, June 9th. I do not know that they had the bond already up on the 31st of May. It might have been then. I told Mr. Miller at that time (June 8th or 9th) that I understood that they had until that afternoon to furnish the bond. I did not tell him that they had lost their contract. I said they had until that afternoon to furnish it. Until whatever day I was in Fairbanks.

Q. The 8th or 9th of June?

A. I had been told here the morning I left, by the man who did furnish part of the money, that

(Testimony of Earl Dunn.)

he hadn't yet furnished it. I left here in June, but I had no occasion to record the date. If Mr. Miller should say it was the 9th of June that I told him that the Northern Truck Company had lost their contract, that could be the date. I did not, on or about the 8th or 9th of June, in Fairbanks, Alaska, in the presence of Mr. Pop Miller—the gentleman sitting back there—and myself, in a conversation with reference to hiring him to go to work on my contract, state to him that the Northern Truck Line had lost their contract, or words to that effect. Nor to the effect that they had not been able to get a bond. That was what I was informed. It could have been that I so stated that to him.

Q. Well, who told you they weren't able to get a bond?

A. Mr. Noggle was up talking to Mr. Fowler just the day before.

Witness continuing:

That was here in Anchorage. I saw Mr. Miller the next day after I went to Fairbanks. That is only a day's drive. Mr. Noggle told me that they would have until the next afternoon or day after to raise the bond. I was merely repeating what I had been told. That was in June, all right.

Q. Don't you know that Engle, on the 21st of May, put up \$2500 as half of the bond, and Z. E. Eagleston, on the same day, put up another certified check for another half, before you ever left here?

A. Well, it was just what was told.

(Testimony of Earl Dunn.)

Q. Anyhow, you told them you didn't think the Northern Truck Line could go on with the contract because they didn't have their bond on or about the 8th or 9th of June?

A. That would be two months, nearly, after they had been given the contract. [40]

Q. And you know that during that two months the roads were so impossible no hauling could be done, don't you?

A. No, they weren't.

Witness continuing:

I left here after my conversation with Mr. Mead-
ors, who claimed to be president, and he told me
that I had nothing to do with it and nobody had
any authority to authorize me to act as manager,
and so he just shoo'd me out of it. Yes. That is
the idea. That was it. I went off and hunted up
another contract. Yes, by June 8th, I had aban-
doned all interest in this contract that the Northern
Truck Line had. Any times that I had been dis-
cussing it with Mr. Haugen he still said that they
hadn't been able to get a bond and he was worried
about it. This was nearly two months after. I was
in Anchorage while he was worried about getting
a bond. Yes, I was talking with Mr. Haugen and
he was worried about getting a bond. I have re-
ceived contracts. I consider myself an average good
hustler; an average promoter; just an average good
talker. All the time I was with Mr. Haugen we
talked to Mr. Hoppin or Mr. Fowler, or any C.A.A.

(Testimony of Earl Dunn.)

official, I was doing the talking. I imagine Mr. Haugen is able to talk for himself. The talking was my part. I was supposed to do that. Yes, I am much on getting bonds. I had no trouble getting bonds for myself. I did not get a bond on this contract because I was told I was through. Right after the contract was signed—a few days.

Q. The contract was signed April 15th, and he had until May 31st to get a bond?

A. Oh, but Mr. Meadors was here before that.

Q. I know, 24th or 25th of May, and left the next day.

A. He remained several days.

Witness continuing:

It was in the latter part of May, likely, that Mr. Haugen told me he had trouble getting a bond. As soon as they told me I had nothing further to do with the profits of the business, I certainly had nothing further to do with getting the bond. I obtained a bond for myself last year. I was no longer interested in the Northern Truck Line contract [41] after that. They were going to look after the bond between April 15th and May 1st. They were just very interested in me getting the work for them. He said he would get the bond without any trouble.

Q. And you don't know that he did have any trouble, do you?

A. Well, if it takes you six weeks to get it—it didn't take me that long last year.

Witness continuing:

I filed this suit some time last year. It could have

(Testimony of Earl Dunn.)

been October 20th. I had an attorney, I believe, send a registered letter to him. The return slip will be on file. I had demanded the money so many times. I did talk to him about a settlement. On an average of about once a month for a year and a half. This contract was let April 15th. On October 20th I commenced this suit, a year later. After October, 1945. I consulted Mr. Haugen about money on this contract several times in the year '45. That contract is '44. I consulted him any time I would happen to meet him in the year '45. It could have been in a house or in his own place—his residence. I was sitting in his car one time when I asked him. I considered myself a partner in this contract, an equal partner in the profits. In three of them, yes, one some thousands with the Morrison-Knudsen, too. On that contract, I was paid off on the basis of just what the truck hauled. I was paid so much per ton mile for what I hauled. I was not paid on a division of the profits.

Q. Still you say you had a contract with Mr. Haugen that all hauling done by either one of you would be on a 50-50 basis of the profits, but you accepted a check for \$500 or \$600, on the basis of so much per ton mile?

A. Out of \$2000, yes. I believe it had run into over \$3000.

Witness continuing:

I just didn't get any division of profits. I did ask for a division of profits, just asked for it. The settlement on ton miles was just what my own in-

(Testimony of Earl Dunn.)

dividual trucks hauled. I was to get a division of profits besides that, in trucks that was hired and they hauled for less than what I obtained the contract for. [42]

Q. Were you to get payment for the truck and man that you furnished at so much per ton mile and also a division of the profits?

A. We were both to have the same, yes.

Witness continuing:

I have never been paid on the Morrison-Knudsen contract. I have demanded payment. It wouldn't be a great amount on that. It is a trifle in view of the larger amount.

I was convicted for the theft of an automobile and accessories, at Brandon, Manitoba in 1922. I was sentenced to one year in jail, but we are doing business in Alaska now.

Q. Were you convicted for a theft of an automobile at Regina in October, 1923, and sentenced to 18 months?

Mr. McCarrey: Just a moment, please. If it please the Court, the witness has admitted already—I see no reason for a mud-slinging contest.

Court: Not if it is repetition.

Mr. McCarrey: It is the same conviction the counsel brought out.

Court: Are these the same you asked about before?

Mr. Grigsby: No, your Honor. He testified he served two terms. I have a half dozen more here. I wish to prove he is a habitual criminal by his own

(Testimony of Earl Dunn.)

admission. January 21, were you sentenced to 18 months? January 21, 1932—for breaking, entering and theft, and sentenced to three years of which you served two in the penitentiary at Prince Albert, is that correct? A. Yes.

Q. May 14, were you convicted of breaking, entering and theft and sentenced to one year? May 14, 1934?

Court: Where?

Mr. Grigsby: Regina.

Witness: Yes.

Q. September 18, 1935, at Vancouver, were you sentenced to six months for retention of stolen property? A. Yes.

Q. Automobile tires? A. Yes.

Q. April 28, 1936, at Calgary, were you convicted of theft, given one year in jail at Lethbridge?

A. Yes.

Q. March 25, 1937, in Calgary, were you convicted of shop breaking [43] and theft and sentenced to two years in the county jail at Lethbridge?

A. Yes.

Q. Now, May 1940, at Winnipeg, for obtaining money by false pretenses, did you serve three years in the penitentiary at Stormy Mountain?

A. Yes. That's about the end of it.

Q. And you were under investigation—

Court: Well, never mind about the investigation.

Mr. Grigsby: Did you ever enter Alaska illegally from Canada.

(Testimony of Earl Dunn.)

A. We filled out all the permits that was required by the United States Army.

Mr. Grigsby: Well, we will withdraw that question.

Mr. McCarrey: Does counsel wish to offer that in evidence?

Mr. Grigsby: No, your Honor. The witness has testified and admitted what I asked him. That's all.

Court: Have you some redirect examination, Mr. McCarrey?

Mr. McCarrey: If you please.

Court: You may proceed.

Redirect Examination

By Mr. McCarrey:

With reference to obtaining a bond on these contracts, when I believed I would have a share in it, I had started negotiating for bonds. I believe I had those negotiations pretty well under way. I signed off those negotiations immediately when Mr. Meadors told me they wouldn't need me any more. It appeared that they got the contract and that was all they wanted of me. I got that payment of \$500 or \$600 from Morrison-Knudsen Company. I went out and got the check and took it over and gave it to Mr. Meadors and some days later, I got the money from him. He did not pay me the first time I asked for it. He paid me the second time I asked for it. I didn't leave until I got it. I had to use pressure to get that.

(Testimony of Earl Dunn.)

Recross Examination

By Mr. Grigsby:

I signed and verified the complaint in this action. By furnishing [44] equipment and procuring contracts, is a motor car, which I drove many thousands miles not equipment?

The Court: Well, don't ask questions; just answer questions.

Witness continuing:

I drove that motor car down here in January. I used that in procuring a contract let in April. What I mean is that I am in so much money in my expenses to Alaska on account of an arrangement that I say I made with Mr. Haugen on behalf of the Northern Truck Line whereby I was to become a partner with the Northern Truck Line Company. I spent my money because I thought I was a partner. Yes, in procuring a contract I had all my own expenses and I firmly believed that I would get a share because he told me that we would split the profits between us. I did consider myself a partner with the Northern Truck Line Company. I was the manager of the Northern Truck Line Company and a partner of it at the same time. I went in as manager, in partnership with the company. We were just to be partners. As partners, I was entitled to half the profits of everything. I haven't seen an accounting of what the profits were of the performance of the contract of April 15th with the C.A.A. I have never asked for one.

(Testimony of Earl Dunn.)

Q. Well, you were entitled to half those profits, weren't you?

A. I was satisfied if I just got my wages.

Q. But you didn't work for wages, did you?

A. Since I couldn't be a partner I should be compensated for the time I spent.

Witness continuing:

I sued for whatever is on that paper. I sued for what's on the paper. Now I don't know—I sued for the reasonable value of my services. The only contract, verbal or otherwise, that I ever thought I had was a contract of partnership. While I was down here during all this negotiating, I remember attending a luncheon of the Anchorage Chamber of Commerce. Yes, I said a few words. I did not in this few words, tell the people assembled that I was the owner and had control of about fifty trucks. There was no trucks mentioned in the few words I gave as a visitor to the Chamber. I could have made a statement at some time that we could procure whatever number was required for the work.

(Witness is handed a paper.)

Witness continuing:

Yes, that would be about 49 trucks. I did give some of those copies to certain individuals. I did not hand Mr. Sump a copy. He may have come into possession of one, but I didn't go and talk freighting with Mr. Sump. Well, all right, we could say I did hand it to him. I did hand to several. Mr. Haugen told me he could get almost any

(Testimony of Earl Dunn.)

number of trucks that was required—any number—and I believe that is Northern Freight Lines that is on there—not me. This is addressed to the Morrison-Knudsen Company, Anchorage, Alaska.

(Paper offered and received in evidence and marked Defendant's Exhibit C.)

Redirect Examination

By Mr. McCarrey:

At the time that this letter was submitted to the Morrison-Knudsen Company, Mr. Haugen had knowledge of this. I did it with his consent. Whereupon, the plaintiff rested, and, thereupon,

ROBERT RISLEY

called as a witness on behalf of defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Grigsby:

My name is Robert Risley. I live in East Anchorage, have lived in Anchorage since 1940, am engaged in the business of vulcanizing. I know Mr. Dunn who was just on the stand. I made his acquaintance about a year ago. I did not know him in '44. I have known him in Anchorage and vicinity. I know what his general reputation has been during the time I have known him in Anchorage and vicinity as to truth and veracity. It is bad.

(Testimony of Robert Risley.)

Cross Examination

By Mr. McCarrey:

Mr. Dunn has had tires at my shop. They were there for some time. [46] It did become necessary for an attorney to write me to have those tires returned to me after I falsely sold them without authority from the Court.

Redirect Examination

By Mr. Grigsby:

That did not have anything to do with my knowledge of his reputation. And, thereupon,

CHARLES SUMP

called as a witness on behalf as defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Grigsby:

My name is Charles Sump. I have lived in Alaska off and on for 14 years, for seven years in Anchorage and vicinity. I know Mr. Earl Dunn who was just on the stand. My business is trucking. I have known Mr. Dunn, I would say, heresay, for a period of about three and a quarter years, but in actuality, about two years. That is in Anchorage and vicinity. I knew him elsewhere in Alaska. I know his reputation elsewhere in Alaska prior to the last two years. I knew him prior to the last two years. I know what his general reputation in Anchorage and vicinity has been during the time since I have known him, for truth and veracity.

(Testimony of Charles Sump.)

It is bad. It smells. I heard Mr. Dunn testify with reference to handing me a copy of a letter addressed to Mr. Gebo of the Morrison-Knudsen. He handed me that right after the break-up in '44. For the purpose of soliciting my business. That is, to get my trucks and sub-contracting.

Cross Examination

By Mr. McCarrey:

I never went to Mr. Dunn to obtain work. I fully realize that I am under oath. Mr. Dunn came to me here, as I said, right after the break-up in 1944, and asked me to furnish certain trailers and trucks for hauling. Only in the nature that I went to him was to follow up on his proposal. He came to me. Yes, sir. He came to me at my home under the conditions that he was hauling rails and asked me if I would [47] go to work for him, if I would furnish the equipment. I had a conversation with Mr. Dunn during 1945. At one time I borrowed a pipe trailer off of him. That was in 1945. I went to him at that time.

Redirect Examination

By Mr. Grigsby:

The hauling of the rails was in connection with a contract that he had with the United States Army hauling from Chitina, Alaska to Sutton. And, thereupon,

J. R. MILLER

called as a witness on behalf of defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Grigsby:

My name is J. R. Miller. I arrived in Anchorage on the evening of May 23 of 1944. From the Alcan Highway. I am a truck contractor. I know Earl Dunn who was on the stand here. I have known him in '43, in the latter part of '43, and the first part of '44 in Dawson Creek. I just talked to him casually, wasn't too personally acquainted with him at that time, but I did know him there, in the Fall of 1943. I knew him, of course, here in Anchorage, and met him once in Fairbanks. I know what his general reputation has been during the time I have known him at these places, for truth and veracity. It has been very bad. I met Mr. Dunn in Fairbanks, I think on the 9th of June, 1944. I had a conversation with him at that time. It was in regard to this Northern contract. This freight that was coming out of Valdez. He informed me that the Northern Truck Lines Company could not raise their bond and they had lost their contract, and he offered me a proposition to furnish more pole trailers and haul steel for him on a contract that he had. At that time, I was under an arrangement with the Northern Truck Line Company. It was through the Northern Truck Lines that I came in here. I wasn't at Fairbanks then on my way in here. We had been in here at Anchorage—had hauled a load

(Testimony of J. R. Miller.)

for Lytle and Green into Big Delta and gone into Fairbanks later on. I had not hauled for the Northern Truck [48] at Big Delta. We picked up a load for Lytle and Green on the way from Valdez. The road to Valdez was closed at that time. While here, I had made some arrangement with the Northern Truck Lines to haul freight out of Valdez on a contract with the C.A.A. I was to furnish five trucks on that hauling. It was in Fairbanks that Mr. Dunn told me, in substance and effect, that the Northern Truck Line had been unable to get a bond, and wanted me to go to work for him. That occurred in Fairbanks. I immediately wired Northern Truck Lines here, asking what the status of the position was. I got a wire back to report in Valdez. I did so. I was in charge of all trucks that went out of Valdez.

Cross Examination

By Mr. McCarrey:

I arrived here in Anchorage in 1944, from Dawson Creek, on May 23, or—— I was requested to leave Dawson Creek. I never rented a house from Earl Dunn. I had no occasion to pay Mr. Dunn rent for a house. In 1945, I drove a truck of Mr. Dunn's to Palmer, Alaska. I had his driver's consent. He was kind of a tall, slim fellow, but I am not much hand at remembering names. We were all playing around together here waiting to go to work. He was hauling coal at the time; had been out of Palmer, on a little two-bit contract down

(Testimony of J. R. Miller.)

there. And some of my boys—some of the fellows that came with me—were staying with the driver of Dunn's in this house Mr. Dunn was speaking about. However, I didn't live there. The trucks were all piled in a driveway here—five or six of them—and we took the closest truck to the back end, which was Mr. Dunn's. I and Satter drove it to Palmer, met Mr. Dunn down there, and he came back with us. Mr. Satter whom I spoke of, was one of my drivers. He did not work for Mr. Dunn. Dunn's driver is the one who gave us permission to drive the truck to Palmer. I think his name is Kenny something. I am not sure. I don't just remember his name. This driver had authority to drive the truck all the time, any place he wanted to go. I was with him on various occasions. He did not go with us on this occasion—he told us to go ahead. I don't recall exactly why [49] I went to Palmer. It was not to pick up Mr. Dunn.

As to my being asked to leave Dawson Creek, there was a trucker's association organized in Dawson Creek in the latter part of '43—Decemebr '43—and '44. Some 600 trucks were organized into a group. I happened to be present at that organization. The contracts were getting to where there was less hauling to do and those contractors down there were disregarding the truckers and bidding to get contracts, and there was a surplus of trucks. They disregarded us altogether. We gave them cost of operation, the contractors, there was five or six of them. So when the thing got to below cost

(Testimony of J. R. Miller.)

of operation, we refused to work for the new man that got it, known as the Western Transport Company. We had open house, I think, for nine weeks. We worked through the American Army from the Second Lieutenant up to General Washing in Edmonton, and also the Canadian Army up to General Roberts. I worked in the Intelligence Service, through a McKnight. And McKnight, who was Chief Inspector of Intelligence Service, was the man that gave me the low down on Dunn. At that time he was trying to locate Dunn because his brother at that time was out on bond and they were trying to catch up with Mr. Dunn on account of a Ford Truck—I left Canada because I was not working there and the immigration laws, under which I went in—when I finished work I was supposed to leave. My time had expired and me and my boys were all required to leave within 30 days after my work was completed. That was the reason the immigration authorities gave me. That was the only reason. I understand I am on oath.

Redirect Examination

By Mr. Grigsby:

McKnight was the man who was looking for Mr. Dunn. He was the chief investigator of the Intelligence Service, which is an organization connected with the Army that are always on the lookout for stolen property—anything that might not be according to Hoyle—with the Army. I saw this Ford truck which Mr. Dunn said he brought down here,

(Testimony of J. R. Miller.)

or had brought down here from Dawson Creek. I was in Dave's yard when it came back from up here after it had made a couple or three trips for Northern Truck Lines. I was in the yard when it come off the [50] highway. It was mysteriously burnt up in a garage. And, thereupon,

CECIL SATTER

called as a witness on behalf of defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Grigsby:

My name is Cecil Satter. I am in the Army right now, but I was a truck driver before I went in the Army. I have been in the Army about 16 months now. I am not doing any work outside of my duties in the Army because they forbid it right now. I haven't been in the Army for two years. I went in a year ago February. Since I have been in the Army, and before that, I have done work here besides. I drove a cab here in town for a while. I also drove the Palmer bus. I know Mr. Dunn. I have known him since '44 in Anchorage and vicinity. I know what his general reputation has been during the time I have known him as to truth and veracity. It was bad.

Cross Examination

By Mr. McCarrey:

I came by that information in meeting the truckers up and down the road and talking with them.

(Testimony of Cecil Satter.)

One was Vern Johnson, who drove for Mr. Dunn on that steel haul. He had an awful lot of trouble collecting his money. He eventually got his money. That is not all I heard about Mr. Dunn. There was that gas tank deal, where he stole the tank off of the Road Commission. That was here in Anchorage. I know the facts about it. I heard that from one of his drivers. The driver did not steal them. I presume Mr. Dunn stole them. It must have been very evident he stole them. I know because he was convicted for them. Well, he was convicted of it, so it was very evident he stole them. I know other examples where the report of Mr. Dunn's reputation is based. My wife's grandfather also had a truck on that steel haul and had trouble collecting money. I don't know whether he had got the money yet. The last I heard he hadn't. He was Joe Oats of Fairbanks. What I know bad about Mr. Dunn, in other words, is for the most part, more or less an opinion [51] I have formed.

Redirect Examination

By Mr. Grigsby:

My understanding of his (Dunn's) reputation is based on heresay. It is what you hear that establishes a man's reputation. That is what I mean by saying it is mostly heresay. I have never heard any good of Mr. Dunn, as of yesterday, no. And, thereupon,

CHRIS HAUGEN

called as a witness on behalf of defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Grigsby:

My name is Chris Haugen. I know the plaintiff, Earl Dunn. I have known him since 1944. I met him first on the highway. I wouldn't be sure—it was somewhere along the highway that I met him. I don't think I knew him in 1943. I lived in Dawson Creek for several months. I did not know him there. I knew his brother. I have heard of Earl Dunn, yes, but I didn't know him personally. The Northern Truck Line, Inc. had some trucks there. We were in the trucking business there. Our home office is Williston, North Dakota. The president of the company is John P. Meadors. I had charge of some work in Dawson Creek. I looked after their equipment and their work. I don't think I met Mr. Dunn at Dawson Creek. He did not drive me from Dawson Creek in an automobile to Fairbanks. I came in a truck. He was not with me. I drove myself. It was a Chevrolet truck. That was in January '44. He was not with me in Fairbanks at all. In January 1944. I have heard his testimony that he drove *me* *town* here to Anchorage from Fairbanks. It is not true. I got here from Fairbanks in a truck. In the same one. Northern Truck Line's—was at that time. It was a 1941 Chevrolet. That was my first trip to Alaska. From Dawson Creek to Fairbanks and then to Anchorage.

(Testimony of Chris Haugen.)

I got down here to Anchorage about the first of February, I would say—that's awful close. It could have been the last days [52] of January. I stayed in Anchorage on that trip a couple of days—three maybe. I heard Mr. Dunn's testimony about a conversation between myself and himself and Marshall Hoppin. That occurred. We met this Hoppin over on a street somewhere close to the bay. I think it was in front of his house. I think he was shoveling snow. I am not sure how the conversation came up. We just stopped there and the man talked to us. I talked enough with him to find out who he was. Hoppin was shoveling snow when I saw him, I think. He was executing a snow shovel, or manipulating it. I couldn't tell by looking at him whether he was a boss of the various bureaus or commissions of the United States. There was the most snow I have ever seen any place—four or five feet. I don't remember of seeing any leaves. Marshall Hoppin is mistaken about his raking leaves at that time, I think. I don't remember the conversation we had with Mr. Hoppin at that time, but I remember he asked us to come up to the office. Earl Dunn did the talking up there. I have been with him on several occasions since, yes. In connection with talking about trucking. In that winter—that spring it was. On those occasions, he always did the talking. When Earl Dunn is along, he always does the talking. I am not much of an orator myself. I heard him testify that when I left Dawson Creek with him, I went to Fairbanks under a verbal agree-

(Testimony of Chris Haugen.)

ment that we would look up some freighting business—trucking business—and share 50-50 in the profits of all business that we procured in Alaska. I never made such an arrangement with him. I wasn't in a position where I could do that. I did not have any authority from that company to make a contract whereby I would take a man in partnership with the company. I was a stock holder in the company, yes. Their home office was in Williston, North Dakota. Their articles are on file here. I never had any agreement of any kind, verbal or otherwise, with him about sharing the profits of any trucking business or hauling business or freighting business which we, together or separately, should procure in Alaska, only the trucks he had of his own. He told [53] me he had several trucks. I don't remember how many, but he said he had several.

(Witness is handed Defendant's Exhibit C.)

Witness continuing:

I have seen that before, yes. I first saw that a day or two ago in your office. You handed it to me. You got it from Sump. Sump was there. I had never seen it before. I heard Mr. Dunn's testimony on cross examination here to the effect that he put this letter out with my consent. I never gave my consent. I never did give my consent. I never consented to any such letter being written. The Northern Truck Lines had similar trucks to the two—five-ton trucks carrying 3200 gallon tanks on

(Testimony of Chris Haugen.)

semi trailers, as represented in that letter. We have 3200 gallon tank trucks. We had two of them at that time. We had two 2600 gallon trucks with tanks. We had two small trucks that held, I believe, 1800—between 1500 and 1800. That's all the small trucks we had in the tankers. We did have ten trucks carrying 1600 gallons. We had eight trucks altogether. We did not have 30 trucks with stake bodies. The Northern Truck Line never had or under its control or its possession, 49 trucks at that date. When we came here we didn't have control of any more than we owned. Eight of them. That is all we had. I never told Mr. Dunn that we had 49. We did not have an option on ten 10,000 gallon storage tanks, nor on a number of smaller ones. We did not have a well equipped repair shop in Canada or Alaska. We had it in North Dakota. We did not anticipate moving that shop from North Dakota to Anchorage. It could not have been done. I absolutely never authorized Dunn to make any such representation as that. Nor the rest of that stuff—the option on 10,000 gallons, no. Mr. Dunn did visit the C.A.A. offices with me, in connection with getting information from the C.A.A. about prospective hauling and freighting. He did visit me in that connection. His interest in it was the use of his trucks. I don't know what trucks. He claimed he had several. I mean to use what trucks he claimed he had. The arrangement under which we were to use his trucks was to pay him for it the same as we did on the Morrison-Knudsen contract,

(Testimony of Chris Haugen.)

so much a ton mile. When I had used one truck two or [54] three loads—I think two—and then it disappeared out of here all of a sudden. I heard it went to Dawson Creek. That is the Ford. That is the only truck of his we used in connection with any hauling. We never used his GMC truck. It is not true that he loaned me \$75.00 for my expense money to get down here from Dawson Creek. He loaned me no money whatever. After we got through with the work for Morrison-Knudsen, we settled on a per ton mile basis. We never had a contract with Morrison-Knudsen. We just hauled for them. He made no demand for a division of the profits, nor asked me what they were. There was no demand for anything else on the settlement of that contract than what he got. The first I heard that he claimed we owed him for services rendered and equipment furnished and money used in procuring the contract of April 15th with the C.A.A., was when he sued us. I don't know whether we got a demand from him before that through Mr. Davis, his lawyer. We might have got a letter. I don't remember. The first I saw the summons and complaint was when I came to your office (indicating Mr. Grigsby), you told me about it. If I did get a letter from Mr. Davis demanding payment, I never did before that receive any demand from Mr. Dunn. I have met him often here in Anchorage. He never made any claim to me personally on the street or anywhere else, demanding a payment for services rendered.

(Testimony of Chris Haugen.)

Cross Examination

By Mr. McCarrey:

I think that I met Mr. Dunn first in 1944. His brother rented a tank from me in Dawson Creek. Dawson Creek was about the size of Anchorage in 1943. Anchorage is about 10,000, I think they estimate. I think Dawson Creek had 10,000 at one time. I think Whitehorse had 20,000. I think there were 10,000 people in Dawson Creek in 1943. I don't know for sure. I don't believe there was any name on some of those streets in Dawson Creek. Our garage was five, six, seven, eight blocks from the bank. There were camps all around Dawson Creek. I don't know how many people would be there in these camps. Where we had our garage was a wheat field before we came, so whether it was inside the corporation or not, I don't know. I believe before the war Dawson Creek was five or [55] six hundred. The camps I was speaking about were in similar vicinities as where we were at. I don't know the actual population of Dawson Creek in the summer of '43. I think maybe 10,000. I have no idea where the boundaries of Dawson Creek proper were. If those camps did not compose a part of Dawson Creek as permanent residents, well, I wasn't in Dawson Creek myself. I suppose the bank was in Dawson Creek. I said I rented that tank from Mr. Dunn's brother. A man that was driving a truck could be in Dawson Creek and not see him (Mr. Dunn) in six months because maybe

(Testimony of Chris Haugen.)

he came in late at night and left so, you wouldn't see him for six months if trucking was busy.

When I first came to Anchorage, we lived in a little house over on—well, lived three or four places. When I first came here, we lived in a house on Anderson a couple of days. The first time I came to Anchorage, I stayed at the Lind-Dudley. I met Mr. Dunn and I stayed with him, in the same room. I met Dunn the first day I came here. I met him on the trip. I met him down the road. I met him once or twice before on the trail. I couldn't say what date it was or I wouldn't be sure where at. I couldn't answer whether this was 1943 or '44. It would be before I came to Anchorage. I checked up on it, and it was one of the last days of January or first of February I come to Anchorage, but I have no date for sure. I testified that I met Dunn before on the road once or twice. I couldn't say how long before January 31, 1944. I was trucking during the month of January, 1944. I was hauling oil from Dawson Creek to Whitehorse or different places. I never came to Alaska hauling oil. We hauled a load of oil from Northway to Dawson Creek. I don't know where I met Mr. Dunn. I wouldn't be sure. I admit that I met him before. I think I met him in the hotel here in Anchorage. I am not sure whether he had a room there by himself before—whether I met him in the hotel or saw that foreign license in the hotel—or saw the foreign license on his car. I might have seen that. I did stay with Mr. Dunn in the Lind-Dudley Hotel. I

(Testimony of Chris Haugen.)

think I paid my rent. I think Mr. Dunn paid for his. Mr. Dunn was not with me when I was talking to Mr. Nehrbas in Fairbanks. If Mr. Nehrbas were to testify that Dunn was with me, I [56] I think I would say Mr. Nehrbas was telling an untruth. He wasn't with me. I would say Mr. Nehrbas was telling a lie if he said he was with me. I was riding around in Mr. Dunn's car after I met him at the hotel, because it is no good to drive a truck around town. I was looking at the sights. My purpose for coming to Anchorage was to see my brother at Fort Richardson. I was on a pleasure trip, and I drove a truck on a pleasure trip. I don't know how to answer your question as to whether I couldn't drive around town because it was no good. I drove the truck up here on a pleasure trip, part of the way. I didn't drive it from Dawson Creek on pleasure. I did from where we unloaded at Whitehorse. The company had some equipment and had no use for it in North Dakota, and work on the highway was wound up, so they wanted to sell it if they could and I thought probably we could drive it to Fairbanks—we could get loads that far—and sell it. When I come to Fairbanks I found there was no sale for trucks any more than there would be at Dawson Creek because work had been completed. Of course, we couldn't sell our equipment in Canada because of duty on it. While I was in Fairbanks, I had an idea. I had a brother out at Fort Richardson, so I come here to see him. I went to Fairbanks because we thought we could

(Testimony of Chris Haugen.)

unload some of that equipment. I did not take a load of freight up there. We could get a load to Fairbanks if we sold our trucks too. We figured we could. We never knew whether we could get loaded or not. When the road was almost completed, it was a guess proposition. I was alone when I went to Fairbanks. When I said "we figured we could get a load", that is the company equipment, I went to Fairbanks alone in this truck. I came to Anchorage alone.

Q. Now, after you went to see Mr. Hoppin, did Mr. Dunn represent himself as Manager of the Northern Truck Line with your consent?

A. It wouldn't necessarily have to be consent.

Q. Answer the question, yes or no.

A. He might have. I am not sure. It is a long while ago and my memory isn't too good.

Q. I can understand that Mr. Haugen. Did you know at that time [57] that Mr. Haugen was representing himself to be the manager of the Northern Truck Line?

A. There was no doubt about that when I came back with the trucks.

Witness continuing:

I don't remember what he said he was in Mr. Hoppin's office. I admitted that Mr. Dunn did most of the talking. In fact, he does all of it when you are with him. I am not much of a talker. I was glad to get the contract. I went back down to Dawson on a truck. Drove the same truck down. I came back the last days of February or the first of March.

(Testimony of Chris Haugen.)

I tried to check up on that, but I had no definite way of proving what day I come back. I am not sure. I went to Dawson again in the fall of 1944. I came back to Anchorage in February of 1944 on my second trip. The last days of February in 1944. I came back because there was no work for our trucks down there. I don't think I ever received any correspondence from Mr. Dunn. I don't think I got a letter from him that he sent me. The second time I came back there were several trucks come up. Most of us was loaded to Fairbanks. I refer to the trucks and drivers. Dunn claimed to own one of them. I didn't own any. I didn't claim to own any then. I was driving a company truck. We got a load to Fairbanks, which we would have come for regardless, and we had to take these trucks back to North Dakota or back to the States or get them out of Canada, so if we got a contract here that would be swell. If we didn't, we could probably do some work here until the war was over and then sell it. I don't think I ever received any correspondence from Mr. Dunn to come back up here. Mr. Dunn's trucks did not arrive here at the same time ours did. They were coming up more or less in a caravan. We unloaded an International at Northway, of stove oil, that was brought from Dawson Creek to Northway. That was one of ours. That truck come to Anchorage. I didn't own any of them. I was not on that truck. I am trying to think where we unloaded the other load, but I don't remember; but we brought two trucks to Anchorage

(Testimony of Chris Haugen.) and three went on to Fairbanks. Dunn's truck, the Ford, went to Fairbanks with a load. I did not go to Fairbanks myself that time. I came [58] right across over to Anchorage. I arrived in Anchorage the last part of February. I did not leave Anchorage after that to go to Dawson Creek before the fall of 1944. I did not stay here in Anchorage all the time after I arrived here the second time. I was to Valdez and Fairbanks on several occasions. When I came back to Anchorage in February, I did not have a contract with the C.A.A. through Mr. Dunn. Yes, I think I went with Mr. Dunn to see Mr. Fowler and Mr. Stone to get a contract. We were together to see Fowler and Stone and Hoppin on several occasions, I believe.

(Witness is handed Exhibits two and five.)

Witness continuing:

(Referring to exhibits.) They look familiar. That is my signature at the bottom of the first page. It looks like I signed it of my own free will. Mr. Dunn didn't hold a gun at my head and make me sign that. Yes, I can see that I signed below Mr. Dunn, but what does that mean? It is Northern Truck Line by Chris Haugen. I don't know about Mr. Dunn, there, being manager. I never wrote his name in there. He wrote that himself. I wrote my name after that. It looks like at the time I wrote my name there I saw the name Mr. Earl Dunn, manager and director of the Northern Truck Line. I did not object to that.

(Testimony of Chris Haugen.)

(Witness is handed Plaintiff's Exhibit No. 4.)

Witness continuing:

Yes, here is a copy of the contract. I signed that contract. Mr. Dunn's name wasn't on there because he didn't have no authority to sign, I don't imagine. I don't know that he had authority to put in a bid with my consent. I don't remember that signature being there. I didn't say that Mr. Dunn's signature wasn't on there. I don't remember. I filled out that bid. I did most of that work. These were partially complete when they come out. I did not make those pencil notations thereon. What I did on that bid to fill it out was to put in these figures. I think I put those figures on there on page one of said exhibit and the same on Exhibit No. 2. I don't remember the particular incident now.

Q. Well, how come "E.D." is behind there—Earl Dunn?

A. Don't [59] that refer to that writing above?

Q. I am asking you.

A. That's what I thought. It looked like it to me.

Witness continuing:

I don't know whether the same pen put the "E.D." and the figures in. I never did borrow any money from Mr. Dunn. He never gave me any money. I never paid Mr. Dunn any money only what the company paid him. I never gave Mr. Dunn any money at Dawson Creek. That is my

(Testimony of Chris Haugen.)

signature on that first contract. I had authority to sign the contract for the Northern Truck Line. I didn't have any authority to enter into negotiations with Mr. Dunn. I had authority to bind my company for fifty or sixty thousand dollars on a contract, yes. I had special permission from the company to get a bond. I had authority to get a contract. I didn't have authority to bind the company for fifty or sixty thousand dollars on it, there wasn't that much money involved. There was involved \$5,000. There was none involved on the second contract. We only had one contract that was bonded. I had authority to sign a contract, yes. I got a wire from Mr. Meadors giving me authority. I believe a copy of it is on the back of those contracts. That was the authority I presented to Miss Hasler that day. My authority to come into the United States with those trucks was because we had no business in Canada after the work finished. I brought those trucks into Alaska with authority from the Army at Dawson Creek. As to the authority from the Northern Truck Line, it was discussed through letters. I imagine you would call it authority, I had, to bring them in. It was discussed through letters that we were going to bring them up here. They asked me to use my own judgment about it. I have always tried to be on the up and up. As far as bringing the trucks to Alaska, I did have lots of leeway. I did have authority to sign the contract. I did not have to wire every time I wanted to fill a gas tank. I could sign a contract without

(Testimony of Chris Haugen.)

special authority. I couldn't enter into a contract with Mr. Dunn. I know a gentleman by the name of Swann. I don't remember the [60] first time I met him. I met him before he came to Alaska, but I don't remember where. The Northern Truck Line is not at the present time indebted to Mr. Swann. They are not at the present time, yes.

(Paper handed to the Clerk of the Court for purposes of identification, paper marked for identification as Plaintiff's Exhibit No. 7. Paper handed to witness.)

Witness continuing:

That could be my name at the bottom. I know Mr. Engel, to whom it is written. I think I wrote that letter. That is my signature at the bottom.

(Paper admitted as Plaintiff's Exhibit No. 7. Mr. McCarrey reads plaintiff's Exhibit No. 7, being a letter dated February 22, 1944, to the jury.)

Witness continuing:

I meant by this letter when I said I had been up there in a car is, well, in Canada or lots of places, any motor vehicle—self propelled motor vehicle—could be a car. So that wouldn't necessarily mean anything. Sometimes you use a different word to mean the same thing. The word car, as I write it in my letter, can mean trucks, tankers, busses, anything. I meant it to be a motor vehicle.

(Witness is handed a document and asked to identify it.)

(Testimony of Chris Haugen.)

Witness continuing:

I can identify that. That is my signature.

(Document is offered and admitted in evidence and marked Plaintiff's Exhibit No. 8 and read to the jury.)

Witness continuing:

Referring to my statement in that letter "got a wire from there that trucks are needed at once", I don't remember that particular instance. I don't remember that I received that wire from Anchorage. Somebody else could have got a wire that he showed me.

Q. But you say in the letter that you got the wire. A. Did I say I got a wire?

Q. You say: Plan on taking it with me to Anchorage. Got a wire from there that trucks are needed at once.

A. Well, that wouldn't mean [61] that I got a wire.

Witness continuing:

I didn't say I never got a wire from Anchorage. I wouldn't say under oath that I never got a wire from Anchorage. If I did get a wire, I don't know from whom that come. I am testifying that I may have gotten a wire or did get a wire, but I don't know who it's from. It's impossible for me to say. I did testify some time ago on the witness stand that my memory was rather weak.

(Telegram admitted in evidence as Plaintiff's Exhibit No. 9. Witness identifies it.)

(Testimony of Chris Haugen.)

Witness continuing:

Yes, I think I sent that. I think I sent it to him.

(Telegram read to the jury.)

Witness continuing:

With reference to my testifying yesterday that I came to Anchorage the second time the latter part of February, I told you I wasn't sure of the dates. I said I thought I came to Anchorage the latter part of February. I have no way of proving the dates that I come here only by some letters that I happened to find. If this telegram was sent about the 14th or 14th day of March from Dawson Creek, I think that is more accurate than my statement, because I have no way of being sure.

(An instrument marked for identification as Plaintiff's Exhibit. Instrument handed to witness.)

Witness continuing:

No, I haven't seen it before. But we get lots of letters that I never see; our secretary took care of them. I wouldn't care to state that the office never received it.

I recall, in my letter of February 22nd to Mr. Ralph Engel, which was the first letter you handed me today, a statement therein to the effect that I said I had sold the International truck. We did bring that same truck to Anchorage. I don't remember the man's name we sold it to. I was sold under a contract, to be used down there, and the man received all the proceeds of the hauling—and

(Testimony of Chris Haugen.)

then to bring it to Alaska, which he did. The man who purchased that did come to Alaska. [62]

When Mr. Hoppin testified yesterday that he talked to me and Mr. Dunn in Mr. Dunn's car about the trip over the highway, I don't know if he was referring to any trip. I no doubt was present at the time of the conversation, but I don't remember the particular instance. I remember talking to Hoppin, but I don't remember the conversation.

I think probably I know a Mildred Murphy. If it is the lady in question, I believe I knew her as Mrs. Dunn. I first met her in Dawson Creek. I think I met her with Dave Dunn in his car—in a restaurant—in fact, I think she worked in a restaurant. I have been to the home which I thought was known as Dave Dunn's home.

I don't think I know a lady by the name of Lea Mearns. I did not have occasion to go to the hospital in Dawson Creek. I don't even know where it was if there was one. Mr. Dunn never had occasion to take me to a medical dispensary or hospital in Dawson Creek.

I know a passenger car that Dave Dunn was supposed to have had in Dawson Creek. I think he had a couple of them. I never paid any attention as to what they were. I ride in a car or look at a car, I don't pay any attention to what they are. It is of no interest to me. I tend to trucks, yes, but something like that I pay no attention to that. You might drive up in car and I would pay no attention to the kind of car it was.

(Testimony of Chris Haugen.)

Juror: Q. Did the witness know Mr. Dunn's occupation before he had anything to do with Mr. Dunn—in a business way? Did Mr. Haugen know Mr. Dunn's reputation before he tied up in business with him?

A. I didn't know it fully until yesterday. I didn't know it all until yesterday. I heard of it, yes. You don't have to walk very far down the street to hear it.

Redirect Examination

By Mr. Grigsby:

I don't recollect when and where the name of Earl Dunn was signed to plaintiff's exhibits 2 and 5, which are shown to me, being the bids, one of which was dated March 9 and one March 11 and on which the name of Earl Dunn appears before mine. [63]

I do not remember whether the name of Earl Dunn was on them—each one of them—when I signed them. I do not remember who took this to the C.A.A. office, nor how it got there.

Those dates, the letter I wrote Ralph Engel from Dawson Creek on March 12, 1944, and the wire to him from Dawson Creek March 13, 1944, being exhibits nos. 8 and 9, are much more accurate than anything I could find in my possession. I must have been in Dawson Creek on those dates. I do not recall how long after I wrote those telegrams that I left. On my first trip to Alaska, I left in a Chevrolet truck and proceeded first to Whitehorse,

(Testimony of Chris Haugen.)

from there to Fairbanks, and from there to Anchorage, in that truck all the way, only these different points wasn't made in one day. When I left Dawson Creek, I went to Whitehorse first. I did encounter a person on the way that was proceeding in the same direction. He was Harry Tido. He was broken down at Nelson, 300 miles out of Dawson Creek. He stayed with me on different occasions in Dawson Creek. We had roomed together on different occasions. He did not work for me there. He was driving a truck. I don't remember—I don't know when he left Dawson Creek. I had discussed my contemplated trip with Tido before I left Dawson Creek. Probably before I left Dawson Creek I told him where I was going on several occasions. I don't remember any particular occasion. I imagine, I would think so, I don't remember whether I discussed with him in Dawson Creek why I was going to Alaska. I overtook him on my first trip to Alaska between Dawson Creek and Whitehorse. I was driving this Chevrolet truck and was alone. Tido is now in Anchorage. I thought I saw his face in the court room but he isn't. He got to Anchorage last night. He worked for me on this contract. And, thereupon,

EARL DUNN

called as a witness for the defendant, testified as follows:

Direct Examination

By Mr. Grigsby:

Referring to defendant's exhibit C, the letter of March 3, which [63] I testified I had typed, addressed to Morrison-Knudsen Company, I wouldn't say that was the day when it was written, but there was a date on it, very close to it, I was here March 3. I intended to date it the day it was written. I might have made a mistake in the date. I don't know who done the typing on that letter, it was done on my instructions, anyway. Mr. Haugen would be in Dawson Creek when this was written. There was a number of them typed at various times through the winter. There were other copies—several copies similar to that was typed in here certainly. They were typed at any time from January to April, whenever I was negotiating with any concern. Mr. Haugen was here some of the time while I was doing this, he supplied me with part of the information on what trucks they had, and the ones that he could get along with the ones that I could get. I said that Mr. Haugen came down here together with me first the latter part of January. He only stayed a few days. He went back to Dawson Creek and never came down here until after March 16; so from a day or two after the latter part of January until after March 16, Mr. Haugen wasn't here at all. In the meantime, I got the information

(Testimony of Earl Dunn.)

from him, Mr. Haugen, and had them typed out. I got the information before he left here. He did not, before he left, tell me he had 30 trucks with stake bodies, that is the amount of trucks that we could get between us. Yes, I said in this letter that the Northern Truck Line operate the following equipment. Yes, I said "which is maintained in the best of condition by our shop". "Own and operated"—and I named 49 trucks.

Q. Did Mr. Haugen ever tell you he had owned 49 trucks?

A. That was the two—that was the trucks I could get providing the work required it.

Q. That you could get from where?

A. The ones that would be furnished to me and to Mr. Haugen.

Q. From where?

A. That were to come from the States.

Witness continuing:

There wasn't less than 50 or 100 men from the States in Dawson Creek that was only too anxious to come to Alaska. [64]

Q. That was what you meant when you said the Northern Truck Line owned 49 trucks which are "maintained in the best of condition by our shop"?

A. The corporation wanted the work done—was only concerned with how many trucks there were.

Q. Then that was untrue wasn't it?

A. The corporation owned—it was probably stretching the truth a little bit.

(Testimony of Earl Dunn.)

Witness continuing:

I couldn't say that Mr. W. C. Williams typed that one for me. He typed some similar to this but not that one. That was done down town.

Q. Is Mr. Williams present?

(Voice from court room said "yes".)

Q. Mr. Dunn, do you remember having Mr. Williams, who just got up back there, type this, or similar letters, for you on or about March 3, and that when you got down to the point where the letter had to be signed you had a discussion with him as to how to sign it and then you had a conversation with Mr. Williams about how to sign that in which conversation it was mentioned that you couldn't sign it as secretary, and in which you told him: "Well, I got to have some official signature"?

Mr. McCarrey: If it please the Court, I wish Mr. Grigsby would let the witness testify.

Mr. Grigsby: I am putting the question—in which conversation it was stated, either by you or Mr. Williams, that you couldn't sign secretary because you weren't secretary, and you weren't any other officer of that kind, and you couldn't sign Haugen's name to it, and finally you concluded you would sign general manager at the time you wrote the letters. Did you have such a conversation with Mr. Williams?

A. I have an amazing memory to remember conversation to that fine detail.

Q. Well, in substance to that effect?

A. But he typed some of them.

(Testimony of Earl Dunn.)

Q. But you don't remember the conversation?

A. I don't remember it, no, not to that point.

Witness continuing:

I did say that that bid I just referred to, on which my name appears and on which Chris Haugen's name appears, was taken by Mr. Haugen to the C.A.A. I did not go with him when he took it up there, on the first day of April, the day as clearly stated thereon, the bid was to be opened. The bids were to be opened on April 1st. Our bid was taken up on the day they were to be opened.

Q. That is the day you first took it up—on the instrument dated March 9?

A. That was the mailing date out of the office—when they were issued.

Witness continuing:

We filled them out on the day he put them in the office. I saw him leave the house and go down town, I did not go with him. I did go with him, however, when the contract was to be signed. When the question arose about who had authority to sign the contract, word was sent for the two of us to come up. Yes, there was a discussion about who had authority to sign and they objected to me signing the contract because I had no authority. Yes, Mr. Haugen showed a piece of paper to Miss Hasler, showing his authority.

(Witness is handed a paper.)

Q. Is that a copy of the telegram he showed her? In substance?

(Testimony of Earl Dunn.)

A. I would like to read it first. A piece of paper he had was a very narrow strip, about an inch wide. I never saw him produce a piece of paper that big.

Witness continuing:

He never let me see the piece of paper he had. He showed it to the lady in the office, but he didn't let me see it. He passed it directly to the lady and reached for it. She didn't keep it, she handed it back and he put it in his pocket. No, not evidently concealing it from me. I saw the paper.

Q. You said he wouldn't let you see it?

A. No.

Q. What do you mean by that? That he designedly prevented you from seeing something you wanted to see, or you just didn't see it?

A. It was [66] Miss Hasler he had to convince, not me.

Q. But you said he wouldn't let you see it?

A. He passed it directly to Miss Hasler.

Q. Will you explain to the Court and jury what you mean by saying he wouldn't let you?

A. He passed it directly to Miss Hasler, and immediately she read it, he reached for it.

Q. She handed it back to him?

A. He reached for it.

Q. Before she handed it back to him?

A. Yes.

Q. And then she handed it back? A. Yes.

Q. And he put it in his pocket? A. Yes.

(Testimony of Earl Dunn.)

Q. And you thought he didn't want you to see it?

A. Appearances led me to believe it.

Q. At that time? A. Yes.

Witness continuing:

There was something on there that satisfied Miss Hasler that he had authority to sign a contract.

Cross Examination

By Mr. McCarrey:

I know Ralph Engel. I met him in Anchorage in early spring of '44. I didn't know him in Dawson Creek.

With reference to the document counsel has questioned me about, when I say there were other truckers that wanted to come to Anchorage, the fellows that was up from the States hauling at Dawson Creek, when the hauling got over with, they were certainly anxious to haul somewhere else, and they were making every effort to contact anybody that had some work for them; and so I had arranged with my brother, who stayed in Dawson Creek, to contact perhaps 75 or 100 of the truck owners that was there from the States; so that there was far more trucks than was ever listed that could have been placed on any job within a week's notice.

Q. And that's what you had reference to in this—that you had access to that many?

A. That was, perhaps, how it should have been worded. [67]

And, thereupon,

HARRY TIDO

called as a witness on behalf of defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Grigsby:

My name is Harry Tido. My business is trucking, mostly. I have been in Dawson Creek. I was there in the winter of 1943 and '44. I knew Chris Haugen there, and Earl Dunn. I came to Alaska first approximately March 4, '44. I must have miscalculated my dates. I talked to you in your office this morning. Afterwards I looked up a record to determine when I came to Anchorage.

(Witness is handed a document.)

Witness continuing:

This is a gas bill that is issued by the Alaska Highway for every individual trucker to insure you of getting gas at every station along the highway—approximately every hundred miles. That one was issued to myself. There is a record on there of where I stopped for gas during the month of March, 1944. There is no record of when I left Dawson Creek, there is a record here when we left Whitehorse. The U. S. Army made that record. We hand that to them when we get gas. That was a record of my stops where I got gas on my first trip from Dawson Creek to Alaska. I left Whitehorse the 21st of March, 1944. The next place I got gas was Canyon Creek—21st of March, 1944. The next place is Det's Bay—I don't exactly know the rest

(Testimony of Harry Tido.)

of that name. That was approximately 100 miles from Canyon Creek—it was the 22nd of March, 1944. The next one is Koidern, 22nd of March, 1944; and next one is Northway, 23rd of March, 1944. That first station was McCray, approximately 8 miles out of Whitehorse, toward Dawson Creek. We had to back track several miles to get gas. I stopped at McCray on the 21st of March, 1944 for gas. That is approximately 960 miles from Dawson Creek, 960 miles from Dawson Creek to Whitehorse, or McCray. I had an accident on my way from Dawson Creek to McCray. I was broken down at Nelson; that is 300 miles from Dawson. Yes, while I was broken down, someone coming from Dawson Creek [68] overtook me. It was Mr. Haugen. He was driving his truck, a Chevrolet. It was not a tank truck, just a box—rack—more or less. I brought that one International that I was broke down with at Nelson, in to work for him. One Ford was all the trucks I know of at that time belonging to Earl Dunn that were brought here. Afterwards he brought a G.M.C. I wouldn't know the exact date when that was brought. It might have been two or three months after we arrived here, along in the summer. I left Dawson Creek on that trip some time near the end of January and I broke down at Nelson, approximately 300 miles from Dawson Creek. I saw Chris Haugen next after leaving Dawson Creek, at Fort Nelson, the place I was broke down at. That was two or three days after I had left Dawson Creek. He was driving a Chev-

(Testimony of Harry Tido.)

rolet truck. He was alone in it as far as I know. I didn't ask him if he had any passengers, and I didn't see anybody I knew that was with him. I talked with him. There could have been just somebody riding or somebody getting off the highway, I don't remember. He continued on his way, as far as I know, towards Whitehorse. I was broken down there about six weeks altogether. I left my truck there. I stayed there about three or four days, altogether, and tried to get some repairs from the Army—or from one of the construction camps along the road. There were several of them nearby. And, of course, I had to get an order from the captain—or from the commanding officer of the U. S. Army there, to warrant me getting these parts. But they didn't have any. None were available, so I had to go back to Dawson Creek. I got a ride with another truck on the highway. I stayed there until the time that I was able to get a repair for the truck and bring it back to Nelson, get it fixed and bring that load on to Whitehorse. And from there we decided to come up here—rather, we decided before. I didn't go back to Dawson Creek after unloading at Whitehorse. I didn't even unload at Whitehorse. It was just re-billed. Instead of unloading, they just gave me a different set of bill of ladings and that same order was ordered up to Northway. I took it up there. I next saw Chris Haugen, after he passed me on the trail there the latter part of January, when he came back to Dawson Creek. I don't

(Testimony of Harry Tido.)

believe I [69] know how he got back to Dawson Creek. No, I don't remember seeing him until after he arrived there.

After I got the gas the 21st of March at McCray, and the 21st at Canyon, the 22nd of March at Det's Bay, the 22nd of March at Koidern, and the 22nd of March at Northway, Chris and I came to Anchorage together. I drove Dunn's Ford truck. That is, it came up with us. I drove my own and Chris drove the other truck. From the time that Chris Haugen passed me on the trail the latter part of January or the first part of February, he had been to Anchorage and back up there, as far as I know. I do not know anything about when Dunn, the plaintiff, here, left Dawson Creek to come to Alaska, of my own knowledge.

Cross Examination

By Mr. McCarrey:

Mr. Haugen passed me at Nelson when I broke down. He offered his services to help me but there wasn't much he could do, you see. The truck was in the garage at the time and he went on. The next time I saw Mr. Haugen, well, make it between two and three weeks later. That was at Dawson Creek. Mr. Haugen had a load when I saw him the first time, when he was going up the highway. He had to have, because they wouldn't let you up without one. Yes, certainly you had to have a load, or else you wouldn't be allowed to travel the highway empty. Quite possibly, Mr. Haugen could have gone on to Northway, as far as I know personally.

(Testimony of Harry Tido.)

I couldn't say for certain that he went on to Anchorage. He could have went to Anchorage, or Fairbanks, or just a few hundred miles. I wouldn't know about that after he left there. I imagine in certain cases, you could travel the highway without a load if you had a special permit, but it was rather hard to obtain permission to travel the highway empty, or without a load, especially going north. I understood you couldn't go on a pleasure trip with an empty truck. And, thereupon,

CHRIS HAUGEN

recalled for the defendant, testified as follows: [70]

Direct Examination

By Mr. Grigsby:

I heard Mr. Dunn's testimony with reference to when I and he went up to sign the contract of April 15 with the C.A.A., and his testimony to the effect that they wouldn't accept his signature, and that I showed the lady, Miss Hasler, a piece of paper constituting my authority. The piece of paper you hand me is a copy of a telegram from Meadors. I gave Miss Hasler the telegram, which she gave me back later. This is a copy of the telegram I gave her. I lost the original.

By Mr. McCarrey:

I couldn't tell you the date when this copy was made of that telegram. I believe Katie Hasler made the copy, or one of her stenographers. I didn't make it myself. I did not request Miss Has-

(Testimony of Christ Haugen.)

ler to make that. I came in possession of it, it was attached to a contract that we had with the C.A.A. I couldn't tell you the date when I signed that contract, the original contract. I think you will find it on the last page.

Mr. McCarrey: In this respect, I am a little confused, if it please the Court. Here *were* have a contract entered into on the 15th of April and signed by John Meadors.

Witness: For some reason or other, they were re-printed, and there was new contracts made. I don't know for what reason it was.

(Copy of telegram admitted in evidence, marked Defendants Exhibit D, and read to the jury.)

And, thereupon,

WALTER C. WILLIAMS

called as a witness on behalf of defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Grigsby:

My name is Walter C. Williams. I work for the C.A.A., in the Civil Aeronautics Administration. I was so employed in March, 1944. I know the plaintiff, Earl Dunn. I had occasion to do some typing for him in March, 1944.

(Witness is handed a paper marked Defendant's Exhibit C.) [71]

(Testimony of Walter C. Williams.)

Witness continuing:

I believe I typed that at Mr. Dunn's request. I believe it would be on about March 3, 1944, as it is dated, that I typed it. I had a discussion with Mr. Dunn at the time I did that for him, with respect to in what capacity he would sign it. The conversation was, substantially, well, just—he said he wanted something that sounded official. I asked him what he wanted and he didn't particularly know, and we talked it over, and either my suggestion or his—anyway, we came about that particular general manager title. I brought up that he couldn't sign Chris Haugen's name because he wasn't the Northern Truck Lines, and he couldn't put secretary or treasurer. I wrote that out, and I was a little skeptical about the typing. I didn't want to type it in the first place. He said well, he wanted something that sounded official and we just came about using that name, general manager of the Northern Truck Lines. There was quite a discussion before I and he hit upon that name. I typed several other letters addressed to other parties. We used this one—they were about the same. That conversation was at the hotel—my residence, the Lind-Dudley. I think Chris Haugen had gone back to Canada at that time. I did not see him at all in connection with this. And, thereupon,

WALTER C. WILLIAMS

being made a witness for the plaintiff, testified as follows:

Direct Examination

By Mr. McCarrey:

In January, 1944, in the daytime I worked for the Civil Aeronautics Administration, and from 7 to 11 in the evenings, I was desk clerk at the hotel. My duties as such clerk were if there was any vacancies, to rent them, and answer the phone, and just watch them come in and go out. I was in the lobby considerable of the time during those hours, if there was anybody there to talk to, or I read during that time. During January, 1944, I met Mr. Dunn at my hotel. He was staying there. I met Mr. Haugen there at that time. He was staying there. I couldn't [72] set the exact dates. I couldn't even tell you what month it was. I just know they were there. While they were there, as guests of my hotel, I didn't talk much to Mr. Haugen, but I had considerable conversations with Mr. Dunn. I can remember the first day they came in. I went over at 7:00 and Mr. Dunn was in the lobby and after some little time, we engaged in conversation and as well as I remember at that time, Mr. Haugen was at the picture show and he came in later—probably 10:30—and Mr. Dunn introduced me to him, and Mr. Haugen retired—he said he was tired. He didn't do much talking at any time. He was always quiet. I did not at that time have any conversation with Mr. Haugen with

(Testimony of Walter C. Williams.)

reference to his business—where he came from. Oh, yes, I had a conversation with Mr. Dunn with reference to his business and where he came from. I had a conversation with Mr. Haugen about his trip up the highway. That came about probably a year later, or a year and a half. No, they did not stay at my hotel quite some time. I seemed to me like at that time, Mr. Dunn stayed a little longer than Mr. Haugen. I think Mr. Haugen left and *and* went back to Canada. I remember that Mr. Dunn had a Plymouth Sedan. I went for a ride with Mr. Dunn several times. I don't recall Mr. Haugen being along. I remember the Plymouth because I rode in it. And, thereupon,

CHRIS HAUGEN

recalled, testified as follows:

Direct Examination

By Mr. Grigsby:

Referring to my trip to Anchorage from Dawson Creek in January, and my return a few days afterward to Dawson Creek, I went back in the same truck that I came down with. I drove it myself. When I left Dawson Creek with that truck the first time I started for Alaska, I had a load part of the way. I dumped that load at Whitehorse.

Cross Examination

By Mr. McCarrey: [73]

I did testify yesterday that I came up empty, part way, on that trip. Empty to Anchorage. I said

(Testimony of Chris Haugen.)

I was loaded part way. That is what I testified to yesterday. As Tido said, you couldn't get a permit over the highway—or I don't know whether you could with a car over the highway. At one time, we didn't need those gas certificates Mr. Tido testified about. Just when they started using those I don't remember, but any the rest of the boys that had been over the highway could verify, we had a passport, cards—they look something like a registration card for a car in the States—you could just present those and get gas anywhere. Usually we had to sign for gas. In the later months we always had to sign, and we also got a sales slip showing the amount of gasoline we received. I haven't any of these slips in my possession now. I never kept any of them. In fact, we had a fire last fall that destroyed a lot of our papers we had around.

If I came together with Mr. Tido, he wouldn't sign for all the gas. He just signed for his own gas.

Q. How long did you keep those papers? Could you keep them? If you had a slip like this, presupposing you did, could you keep them from one year to the next?

A. They were for one trip. Each trip issued a new one.

Q. Then if I have a document here in my hand, issued 21st of March, 1943; then I have some writing on the back that gas was put in 1944. Would you say that that wouldn't be correct?

A. I don't understand it.

(Document shown to the witness.)

(Testimony of Chris Haugen.)

Witness continuing:

I understood that these slips were only good for one year, or one trip, rather.

Q. And I call your attention to the top of that page and ask if that was not issued originally on the 21st of March 1943? And then I call your attention to the back part of the page where he has some apparent acceptances of gasoline in 1944?

A. There may be some of the other boys that have been over the highway can clarify it. I can't. My understanding was that this was for one trip. And, thereupon,

HARRY TIDO

heretofore duly sworn, testified as follows:

Direct Examination

By Mr. Grigsby:

Q. Mr. Tido, I call your attention to the date on this paper you identified as containing a memorandum of your gasoline purchases. The date, 3/21/43, and the entires on the back, 3/21/44. Now, can you explain the modus operandi of the issuance of these slips?

A. May I look at this for a minute?

Q. Yes. By the way, do you know who the custodian of that slip is—up until this morning?

A. That was mine. It has been in my possession ever since last signed at Northway.

Witness continuing:

I couldn't have got that slip in '43. The only

(Testimony of Harry Tido.)

way I can explain it is that that is a mistake. I imagine such a thing is possible. There is such a thing possible as that it could have been a mistake of the sergeant that issued this. He issued it at McCray. That is where I got my first gas. I got that slip at that time. I did not have it with me already. The sergeant issues these permits to each driver, if you show him your proper identification as to who you are, and your Alcan Highway driver permit, and you make and number of truck and how much weight you are hauling, and where you are going, and even a tally out number; quite a lot of red tape to it, and they were quite pressed for time too, sometimes when things were rushing. And I see here the sergeant who issued this was not the same one that issued this gasoline, because this was issued at McCray and I also received gas there but there is a different man's name who issued the gas. So it could have been possible the sergeant made the mistake of still writing 1943. But there is something else here: That I was in possession of this slip. As a rule—in fact, at all times—we had to turn these back in to the U. S. Army station sergeant at Dawson Creek upon our return. Well, in this case, [75] there was no return, you see. I should have turned this back in at McCray upon my return from Northway to McCray—this slip would have been turned in to the U. S. Army and they would have issued me a new one at McCray to return to Dawson Creek, which would have been turned in there at the last station on the Alaska

(Testimony of Harry Tido.)

Highway. In this case when we left Northway we came to Anchorage, you see, and there was no place to turn these in so I just kept it. I know those entries were made in '44. I could swear to that, that it was made in '44; and this slip was issued in '44. It must have been, because I couldn't keep one of those otherwise. Well, there just wouldn't be any sense in him issuing one in 1943 and me having it, for instance, until the next year and then getting gas on it, because as far as these things were concerned, on that highway, they were issued to the trucker. They just enabled him to get gas at every station and enabled the U. S. Army to keep check of the amount of gas that each individual trucker consumed, just for his own record. And, thereupon,

RALPH ENGEL

called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. McCarrey:

My name is Ralph Engel. I live in Anchorage, am in the business of trucking and contracting. I have lived in Anchorage since May, 1944. Previous to that, I come from Berwyn, Illinois. I resided other places besides Illinois prior to May, 1944. A year previous, I was part of the time in Wisconsin and Chicago—or Berwyn—better known as Chicago

(Testimony of Ralph Engel.)

—and part of the time in Western Canada, Edmonton—around Edmonton. I have been in Dawson Creek, in 1943 if I am not mistaken, in the summer. I know the plaintiff, Mr. Dunn. In Dawson Creek I knew he was a Dunn because there were two of them. I wasn't acquainted personally. I know the defendant, Mr. Haugen. I met him first at Dawson Creek the summer of '43. I was at Dawson Creek during the winter of 1944, after the holidays. It would be the first part of 1944. I had two trucks [76] working on that highway, and one was up there and I had to go up and get it and return it—to take it back. At one time, I inquired for the Northern Truck Line office, after someone, I wouldn't remember who it was. It was close in to where they were living at this time. I wouldn't want to be definite about that. I would say the population of Dawson Creek, of a permanent nature, would be roughly around 600. At the time I went there there were many more people, the outside population, scattered on the outskirts of the small town. I would say at that time the Northern Truck Line had their garage five or six blocks from the center of town. I have seen the Dunn trucking garage. I have seen their trucks parked, but I am not definite just what part of the place it was. I would say, without committing myself, it would be five or six blocks from the Northern Truck Lines, or something like that. I was never to their place. I know a man by the name of John Meadors. He is a partner in the Northern Truck Lines. I first

(Testimony of Ralph Engel.)

met him here in Anchorage. I came to Anchorage the first time in May of 1944—26th or 27th—I am not definite—the latter part of May. Mr. Meadors was in Anchorage when I arrived. I believe he left before the 1st of June, just a short time after I was here.

(Witness was handed three instruments.)

Witness continuing:

I received that telegram. That next instrument is a letter dated March 12th. That was written by me to Mr. Haugen. That other instrument is a letter from Dawson Creek, February 22. I have been engaged in the trucking business for years. I believe longer than ten years. And, thereupon,

EARL DUNN

heretofore duly sworn, resumed the stand for further testimony in his own behalf.

Direct Examination

By Mr. McCarrey:

I heard Mr. Miller testify yesterday that he knew me in Dawson Creek. That is correct. I heard Mr. Risley testify he knew me, and [77] Mr. Satter and Mr. Sump. I am acquainted with all of these gentlemen. I contacted with Vern Johnson for to operate a truck on so much a ton for hauling last summer, and he was to receive his pay when I got it, my money from the railroad. I heard Mr. Satter testify that Mr. Johnson said I never paid my bills. My understanding with Mr. Johnson—I paid him

(Testimony of Earl Dunn.)

\$700.00 expense money through the summer, but the bulk of the payment was to be made when I got my final payment from the railroad. Mr. Johnson has been paid in full. The exhibit you hand me is a receipt I received from him when I gave him \$1200.00 for his final payment. It purports to be payment in full for all claims and demands. It was prepared by J. M. McCarrey.

(Paper admitted in evidence as Plaintiff's Exhibit No. 11.)

Witness continuing:

I had paid Mr. Johnson a total of \$1900.00. There was considerable money he owed me. His earnings came to \$2500.00 for the five months. He was out driving one of my cars for a pleasure trip and he smashed the car up so he agreed to pay for a fourth of it. The accident happened in the city, in the late fall of 1945. I got my money from the railroad as a result of the performance of my contract, the 29th of March. I paid him the same day I got the money. It is not true that Mr. Satter's father-in-law, Mr. Oats, had never been paid his money, as Mr. Satter stated on the witness stand. Mr. Oats was in my employ as a sub-contractor. He was to receive his money as soon as I got it from the railroad. I have paid Mr. Oats in full, the 29th of March, the same day as Mr. Johnson's. He cashed the check at the Bank of Alaska. I also had Warren Alfred in my employ. He has been paid.

(Exhibit No. 10 handed to witness for identification.)

(Testimony of Earl Dunn.)

Witness continuing:

That was a copy of the letter that Mr. Edward Davis sent to Chris Haugen of the Northern Truck Lines, endeavoring to obtain settlement of our claim last year. Mr. Davis was employed as my attorney at that time. [78] I requested him to send the letter of which that is a copy. It is dated May 23rd, 1945.

(Letter admitted in evidence and marked Plaintiff's Exhibit No. 10.)

And, thereupon,

J. L. McCARREY, Jr.

being first duly sworn, testified on behalf of the plaintiff as follows:

Direct Examination

My name is J. L. McCarrey, Jr., and I am a practicing attorney here in Anchorage, Alaska, having been in the Territory of Alaska since 1931. On or about the first part of March, 1946, Mr. Warren Alfred came to my office. Mr. Vern Johnson and sometime subsequent thereto, Mr. Joe Oats came to my office, in reference to the settlement of claims which were due and owing from Mr. Dunn to these gentlemen. And in Mr. Dunn's presence they understood that they were to be paid at such time—these claims were paid by Mr. Dunn on or about the 29th day of March, 1946 in my office. And, thereupon, both sides having rested, the following proceedings were had:

Mr. Grigsby: Your Honor please, at this time, the defendant moves the Court to instruct the jury to return a verdict for the defendant, on the grounds there is no evidence to submit to the jury to justify a verdict for the plaintiff.

Now, if your Honor please, the plaintiff has sued, according to the complaint, for the value of equipment, supplies, money and labor furnished in securing certain contracts with the C.A.A. for the defendant, Northern Truck Line Co. All his evidence with relation to any agreement with the Northern Truck Co. is that he formed a partnership—a 50-50 partnership—with the Northern Truck Co. through their representative, Mr. Haugen, a man who had charge of the work for that company in Dawson Creek. But his evidence of any contract whatever, was that they would share 50-50 on all profits from all work that they obtained in Alaska; whether jointly or severally wasn't stated so it was every kind of work.

Now, he has not put in any evidence of any profits pursuant to that contract, or any claim he ever made to the Northern Truck Lines for any [79] share in any profits; but he is, on the contrary, suing for the value of his labor, services, equipment and supplies and money furnished in negotiating contracts. His evidence doesn't substantiate his complaint.

Now, furthermore, he hasn't shown that at any time Mr. Haugen had any authority, during the time he claims he made an agreement with him, to make an agreement of that kind. It is in evidence that Mr. Haugen was in charge of certain trucks

and did hauling with them, and whatever hauling was to be done—probably at that time anybody with a truck, in possession of it, could get hauling—when hauling was desired. But there is no evidence in here of any authority on the part of Mr. Haugen to form a partnership contract between the Northern Truck Lines, Inc., and Mr. Dunn nor to—there is no evidence of any employment other than that.

He has offered no evidence to substantiate the allegations of his complaint. He has sworn that everything that was done was under a partnership contract—share of the profits. There are—we submit there is no evidence to sustain the allegations of the complaint.

Mr. McCarrey: Would the Court like to hear me on that?

Court: Just a moment. Jury may be recalled. Motion will be denied and exception noted as of course.

Mr. Grigsby: I want to add as ground, that Mr. Dunn swears he was a manager of the company during the time these contracts were negotiated, and, therefore, I make the point that a manager couldn't demand compensation for services in negotiating contracts. He has a suit for services as manager.

Whereupon, the Court instructed the jury as follows:

Ladies and Gentlemen of the Jury: You are instructed as follows:

I.

The plaintiff, Earl Dunn, by his complaint in

this action, asserts that the defendant, Northern Truck Line, Inc., is a corporation organized under the laws of the State of North Dakota and doing business in the Territory of Alaska; that between January 1, 1944 and May 15, 1944, at Anchorage, Alaska, the plaintiff, at the special instance and request [80] of defendant and for the benefit of defendant, negotiated certain hauling contracts with the Civil Aeronautics Administration and furnished certain money, labor, equipment and supplies in procuring said contracts all of the reasonable value of \$1500; that the defendant agreed to pay the plaintiff for his labor and for the money, material, equipment and supplies furnished by the plaintiff in the negotiation of such contracts; that the defendant received the gross sum of \$55,425.43 for the hauling performed by the defendant from the Civil Aeronautics Administration, and that by reason of the plaintiff's services and of money advanced and equipment and supplies furnished by the plaintiff in negotiating said contracts the plaintiff became entitled to the sum of \$1500 from the defendant; that plaintiff has repeatedly requested payment of the sum so claimed but that no part of the same has been paid, and the entire sum is now due and owing from the defendant to the plaintiff, with interest at 6% per annum from January 1, 1945.

The defendant in its answer admits that it is a corporation, as stated in plaintiff's complaint, and denies every other allegation of plaintiff's complaint except that defendant admits it received approximately the sum of \$55,425.48 from the Civil Aeronau-

tics Administration for hauling performed by the defendant; and the defendant asks that this action be dismissed, and that it may recover from plaintiff its costs and disbursements incurred in the action.

When you retire to consider of your verdict you will take with you to the jury room the plaintiff's complaint and the defendant's answer, and you may there examine the same in detail.

II.

In this case, as in all civil cases, the burden is upon the plaintiff to prove his case by a preponderance of the evidence only and not, as in criminal cases, beyond reasonable doubt. Preponderance of evidence means the greater weight of evidence. If the evidence in your mind is equally balanced as between the plaintiff and defendant, then the verdict should be for the defendant, because the burden is upon the plaintiff to present evidence of greater weight than in favor of [81] the defendant before plaintiff is entitled to recover.

III.

As indicated above, the burden is upon the plaintiff to prove his case by a preponderance of the evidence. To justify a verdict for the plaintiff it is incumbent upon the plaintiff to prove, by such preponderance of the evidence, the material averments of his complaint, namely, that during, or about, the time mentioned and at the special instance and request of the defendant, and for the benefit of the defendant, the plaintiff performed the services and furnished the money, labor equipment and supplies

of the reasonable value of \$1500; that plaintiff has demanded of defendant payment of said sum and defendant has failed and refused to pay the same or any part thereof. If the plaintiff has proved each and all of the material allegations of his complaint, by a fair preponderance of the evidence, then your verdict should be for the plaintiff in such sum as you find him justly entitled to receive, but not in any event to exceed \$1500. You may, if you think the evidence justifies, find a verdict in favor of the plaintiff and against the defendant for any sum less than \$1500. But if the plaintiff has failed to prove the material allegations of his complaint, by a fair preponderance of the evidence, then your verdict must be for the defendant.

III.-A

If any person request another to perform service or to supply material or equipment, or to loan money, and no price is agreed upon, and no express promise is made for payment, the law implies a promise on the part of the first person to pay the reasonable value of the service or the materials or equipment, as the case may be, and to repay any money so loaned.

The plaintiff has offered testimony to the effect that plaintiff entered into an oral agreement with the defendant, the latter acting by and through the witness Chris Haugen, wherein it was agreed that plaintiff and Haugen should come to Alaska and there seek to obtain trucking contracts for the defendant corporation and that the plaintiff and de-

fendant should share equally in the profits of any contract so obtained; that pursuant to said agreement the defendant secured the contracts which have been introduced in evidence in the trial of this case as Plaintiff's [82] Exhibits Numbers 3 and 4, under which defendant received for the services rendered the gross sum approximating \$55,000; that the defendant, through its president, denied the validity of said contract and refused to acknowledge it in any way; that plaintiff thereafter brought this action to recover the reasonable value of his services and for money advanced and equipment and supplies furnished by the plaintiff in negotiating said contracts. You are the sole judges of the weight and value of such evidence as well as of other evidence admitted in the trial.

In this connection, you are instructed that if the plaintiff's testimony concerning said oral agreement, and the performance of said agreement on his part and the subsequent rejection and denial of the validity of such agreement by the defendant is true, then the plaintiff is by law entitled to recover from the defendant the reasonable value of his services as well as of any money, material or equipment expended or furnished by the plaintiff in negotiating the contracts. The fact, if it be a fact, that the original agreement as claimed by the plaintiff, was in the nature of a partnership would not preclude the plaintiff from recovering compensation for the reasonable value of his services and of equipment and supplies furnished by plaintiff and money advanced by plaintiff in carrying out

said agreement according to his understanding of its terms.

IV.

The law makes you, subject to the limitations of these instructions, the sole judges of the effect and value of evidence addressed to you.

However your power of judging the effect of evidence is not arbitrary, but is to be exercised with legal discretion and in subordination to the rules of evidence.

You are not bound to find in conformity with the declarations of any number of witnesses which do not produce conviction in your minds, against the declarations of witnesses fewer in number, or against presumption or other evidence satisfying your minds.

A witness wilfully false in one part of his testimony may be distrusted in others. [83]

Testimony of the oral admissions of a party should be viewed with caution.

Evidence is to be estimated not only by its own intrinsic weight, but also according to the evidence which it is in the power of one side to produce and of the other to contradict, and therefore, if the weaker and less satisfactory evidence is offered, when it appears that stronger and more satisfactory evidence was within the power of the party, the evidence offered should be viewed with distrust.

Testimony has been introduced concerning the conviction of the plaintiff of certain crimes. Such testimony is admitted only because it may possibly affect or have bearing upon the creditibility of the

plaintiff as a witness, and for no other purpose whatever. With respect to this testimony, as with all other testimony, you are, subject to the limitations of these instructions, the sole judges of its weight and value.

Some evidence has been introduced tending to impeach the plaintiff as a witness. To impeach means to cast discredit upon or to impute lack of veracity to any statement or testimony. One of the recognized methods of impeaching a witness is to prove that his general reputation for truth and veracity is bad in the community in which he lives. This must be proved by witnesses who are acquainted with his general reputation in the community in that respect. If you believe from the evidence in this case that plaintiff's general reputation for truth and veracity is bad in the community in which he lives, then you have a right to disregard his testimony as a witness as being unworthy of belief, but you are not bound to so disregard it. It is your duty to weigh the testimony of the plaintiff as well as the impeaching testimony with the utmost care in order to determine whether or not the plaintiff's testimony is true or otherwise. If you believe that the plaintiff, while on the stand, gave a truthful, candid and honest statement of the facts, then you should give his testimony such credit and faith as, in your opinion, it is entitled to despite the impeaching testimony. [84]

V.

The laws of Alaska provide that all questions of

law, including the admissibility of testimony, the facts preliminary to such admission, the construction of statutes and other writings, and other rules of evidence, are to be decided by the Court, and all discussions of law addressed to the Court; and although the jury has the power to find a general verdict, which includes questions of law as well as fact, you are not to attempt to correct by your verdict what you believe to be errors of law upon the part of the Court.

All questions of fact, other than those heretofore mentioned in these instructions, must be decided by the jury, and all evidence thereon addressed to them. Since the law places upon the Court the duty of deciding what testimony may be admitted in the trial of the case, you should not consider any testimony that may have been offered and rejected by the Court, or admitted and thereafter stricken out by the Court.

You are the sole judges of the credibility of the witnesses. In determining the credit you will give to a witness and the weight and value you will attach to his testimony, you should take into account the conduct and appearance of the witness upon the stand; the interest he has, if any, in the result of the trial; the motive he has in testifying, if any is shown; his relation to and feeling for or against any of the parties to the case; the probability or improbability of the statements of such witness; the opportunity he had to observe and be informed as to matters respecting which he gave evidence before you; and the inclination he evinced, in your

judgment, to speak the truth or otherwise as to matters within his knowledge.

VI.

You are to consider these instructions as a whole. It is impossible to cover the entire case with a single instruction, and it is not your province to single out one particular instruction and consider it to the exclusion of the other instructions.

As you have been heretofore instructed, your duty is to determine [85] the facts from the evidence admitted in the case, and to apply to these facts the law as given to you by the Court in these instructions.

During the trial I have made no comment on the facts and expressed no opinion in regard thereto. If I have, or if you think I have, it is your duty to disregard that opinion entirely, because the responsibility for the determination of the facts in this case rests upon you, and upon you alone.

VII.

Upon retiring to the jury room you will elect one of your members as foreman of the jury, who will speak for you and sign the verdict agreed upon. You will take with you to the jury room these instructions, the pleadings in the case, the exhibits and two forms of verdict which have been prepared for your use.

If you find for the plaintiff, your foreman will insert in the appropriate place, the amount which you find the plaintiff is entitled to recover from the defendant, not to exceed the sum of \$1500, together

with interest thereon at the rate of 6% per annum from the date on which you find said debt become due, and you will thereupon insert in the verdict the date on which you so find the debt became due from defendant to plaintiff. Your foreman will thereupon sign the verdict and return the same into Court as your verdict.

If you find for the defendant and against the plaintiff, then your foreman will sign the verdict which has been prepared for that contingency and return the same into Court as your verdict.

The verdict not used will be destroyed by your foreman.

Dated at Anchorage, Alaska, this 17th day of May, 1946.

ANTHONY J. DIMOND,
District Judge. [86]

And thereupon exceptions were taken by counsel for the defendant to the instructions, as follows:

Mr. Grigsby: I except to Instruction No. 3 on the ground that it fails to contemplate the defense in this case, which was that any activities engaged in by the plaintiff with reference to negotiating these contracts was to be compensated for by the employment of the plaintiff and his trucks in the performance of the contract. I except to this part of the instruction as follows:

“To justify a verdict for the plaintiff it is incumbent upon the plaintiff to prove, by such preponderance of the evidence, the material averments of his complaint, namely, that dur-

ing, or about, the time mentioned and at the special instance and request of the defendant, and for the benefit of the defendant, the plaintiff performed the services and furnished the money, labor equipment and supplies of the reasonable value of \$1500; that plaintiff has demanded of defendant payment of said sum and defendant failed and refused to pay the same or any part thereof. If the plaintiff has proved each and all of the material allegations of his complaint, by a fair preponderance of the evidence, then your verdict should be for the plaintiff.”

Now, we object to that instruction on the ground that all of the conditions set forth in Instruction 3 might have been complied with—the services might have been performed at the request of the defendant, and they might have been of the value of \$1500, and demand might have been made—but payment might have been according to the contention of the defendant; the consideration might have been the employment of the plaintiff’s trucks on the project, and the instruction fails to contemplate that.

Court: Exception will be noted as of course.

Mr. Grigsby: We except to 3-B on the same ground, that it fails to contemplate the defense of the defendant that all compensation to the plaintiff for any connection he had with securing the contracts was to be received by employment of his trucks. You have changed \$75,000 to \$55,000. [87]

Court: Yes, I have.

Mr. Grigsby: Now, your Honor, the complaint alleges that the Northern Truck Line was paid \$55,000 odd gross. This instruction would lead the jury to believe that they made a profit of \$55,000. It is in evidence, I think, the profit was about \$6,000 or \$7,000.

Court: No, it is in evidence that the total they received was fifty-four thousand and some.

Mr. Grigsby: The profit on that was approximately \$6,000.

Court: I can correct that.

Mr. McCarrey: It is not in evidence that it was \$54,000.

Mr. Grigsby: Well, the complaint alleges gross and I don't think it would be fair to have it go to the jury that they made a profit of \$54,000.

Court: Quite right. We don't want to deceive the jury. I will clarify the language by inserting the word "gross". I will say "the gross sum."

Mr. Grigsby: I think that is all.

Court: Exceptions will be noted as of course.

(And thereupon the following proceedings occurred):

Court: Ladies and gentlemen: Counsel for the defendant has pointed out that Instruction 3-B, as formerly read, under which defendant received for the services rendered a sum of approximately \$55,000, that it might be construed to indicate that the Court was instructing you—or suggesting to you—that there was evidence that the defendant made a profit of \$55,000. There was no such testimony. The testimony was that the gross amount received

by the defendant under these contracts was \$7,739.95 on one contract, and \$47,185.99 on another, which would make \$54,900 and some dollars. So I have changed Instruction 3-B and written in so that it reads as follows: [88]

“Under which defendant received for the services rendered the gross sum approximating \$55,000.”

Juror: Judge Dimond, isn’t it right that they received about 15c per ton-mile and sub-let at about 12c per ton-mile?

Court: There was some testimony along that line, but I am not prepared to say what it was, and I think if you consult the other jurors you can probably determine just what the testimony was. I remember vaguely 16 and 12, but I think the law would not permit me to tell you what the testimony is.

Counsel may proceed with argument. But first, Court will stand in recess until 4:20.

(Whereupon recess was had at 4:10 o’clock P.M.)

Mr. Grigsby: Your Honor please, I am going to ask permission to re-open the case for the purpose of calling a witness to testify to a matter of which I had no knowledge, which would be proper under a motion for a new trial, for newly discovered evidence, and I suppose perhaps I better ask to have the jury excused.

Court: Oh, I think not. We are so close to it—if we were further away from the conclusion of the

trial—Do you object to putting in additional testimony, Mr. McCarrey? You will have the same opportunity, that is, if Mr. Grigsby brings up anything you wish to rebut.

Mr. McCarrey: Very well, your Honor.

Court: Very well, then. Without objection, the trial will be re-opened and additional testimony may be taken on both sides.

WALTER C. WILLIAMS

heretofore duly sworn, was recalled for further testimony on behalf of defendant, and testified as follows.

Direct Examination

By Mr. Grigsby:

Q. Mr. Williams, you have been sworn. At the time you typed the letter for the plaintiff, Mr. Dunn, that you have testified about, did you have a conversation with him about what he expected to make out of any hauling contracts obtained by himself and the Northern Truck? [89]

A. It was in a discussion. It came about the time we were asking about who should be—or what signature he should put on the letter—and I said: “Are you connected with the Northern Truck Lines, or how do you get your pay? What connection is it?” He said: “Well, I will get my share out of the trucking I do”—put in his trucks and get the share out of the trucking.

Mr. Grigsby: That's all.

(Testimony of Walter C. Williams.)

Cross Examination

By Mr. McCarrey:

Q. Mr. Williams, did you just walk down the street with counsel here?

A. With Mr. Grigsby?

Q. Yes? A. No, I didn't.

Q. Did you just walk down the street with Mr. Haugen? A. Yes, I did.

Q. Did you have a conversation with Mr. Haugen?

A. Yes, we went over and had a cup of coffee.

Q. What did you discuss, Mr. Williams?

A. I told—where this matter came up, I told Pop Miller that I had mentioned that before, and I wondered why Grigsby didn't ask me.

Q. Did you have any other discussion?

A. At the time we were out, you mean?

Q. Yes.

A. No. We just went over and had a cup of coffee. Mr. Dunn was there.

Q. Who paid for the coffee?

A. I took out the money: I had 15c in change, and so Chris took out a dollar and had it changed.

Q. Were you offered any consideration for testifying as you have now?

A. Absolutely not.

Q. You come back of your own free will and volition? A. That is right.

Q. Without any promises?

A. That is right.

Q. That is all.

(Testimony of Walter C. Williams.)

A. I don't like any infringement on my character. [90]

Mr. McCarrey: That's all.

Court: That is all. You may step down. Any further testimony?

Mr. Grigsby: No, your Honor.

Court: Do you wish to offer any additional testimony, Mr. McCarrey?

Mr. McCarrey: No, sir.

Court: Very well. You may proceed with argument.

Mr. McCarrey: If it please the Court, and with the consent of counsel, I would waive the recording of this argument.

Mr. Grigsby: Very well.

Court: Very well. The reporter may be excused. She may be recalled at any time, if counsel desire.

(At 6:50 P.M. the jury returned to the court room and the following occurred:)

Court: Ladies and gentlemen of the jury, have you agreed upon a verdict?

Foreman: Your Honor, I, Fred A. Sorri, was elected foreman of this jury, and I herewith submit this verdict.

(The verdict was read by the Clerk. It was a verdict for the plaintiff in the sum of \$1500.00, together with interest thereon at the rate of 6% per annum from the 17th day of May, 1946.) [91]

And thereafter on the 21st day of June, 1946 the defendant by order of the Court was granted ninety (90) days from the date of the judgment herein, to-wit, June 11th, 1946, in which to prepare, settle and file its Bill of Exceptions.

And thereafter on the 7th day of September, 1946 it was ordered by the Court that an extension of fifteen (15) days be granted for the filing of a Bill of Exceptions in this cause.

And thereafter on the 26 day of September, 1946, the defendant was granted until October 26th, 1946 in which to file its Bill of Exceptions.

The matters and things hereinabove in this Bill of Exceptions set forth not fully appearing of record, the said defendant, Northern Truck Line, Inc., tenders and presents the foregoing as its Bill of Exceptions in said cause, and prays that the same be settled, allowed, signed and sealed and made a part of the record in said cause by this Court, pursuant to law in such cases.

Dated at Anchorage, Alaska, this 9th day of October, 1946.

/s/ GEORGE B. GRIGSBY,
Attorney for Defendant.

Service admitted this 7th day of October, 1946.

/s/ J. L. McCARREY, JR.,
Attorney for Plaintiff.

[Endorsed]: Filed Oct. 9, 1946.

[Endorsed]: Approved and settled and ordered filed January 24, 1947. Anthony J. Dimond, District Judge. [92]

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated and agreed by and between counsel for the plaintiff and defendant above-named, that the foregoing condensed and narrative statement of the testimony introduced at the trial of the above-entitled action is a true, correct and accurate statement thereof.

It is Further Stipulated and Agreed, that said statement and Bill of Exceptions may be approved and settled as the Bill of Exceptions in said cause immediately and without further notice.

Dated at Anchorage, Alaska, this 23rd day of January, 1947.

/s/ J. L. McCARREY, JR.,
Attorney for Plaintiff.
/s/ GEORGE B. GRIGSBY,
Attorney for Defendant.

[Endorsed]: Filed Jan. 24, 1947. [93]

[Title of District Court and Cause.]

ORDER SETTLING BILL OF EXCEPTIONS

The defendant in the above-entitled action having applied to the Court for an order approving the foregoing Bill of Exceptions in the above-entitled action, and plaintiff and defendant by and through their respective counsel having stipulated that said statement of evidence and Bill of Exceptions is a true, correct and accurate statement of all the testimony introduced in the trial of said cause, and having stipulated that said Bill of Exceptions may

be approved and settled as the Bill of Exceptions in said cause without further notice; and

It further appearing that said Bill of Exceptions contains a condensed and narrative statement of evidence in the cause, and is complete and correct, and said Bill of Exceptions having been heretofore presented to the Court for settlement within the time allowed by law and the rules of this Court, and the Court being fully advised in the premises, it is therefore

Ordered, that the foregoing Bill of Exceptions be, and the same hereby is approved and settled as the Bill of Exceptions in the above-entitled cause upon appeal of the defendant to the United States Circuit Court of Appeals for the Ninth Circuit; and it is

Further Ordered, that this order shall be deemed and taken as a certificate of the undersigned Judge of this Court who presided at the hearing of said cause, and before whom all the evidence in said cause was given; that the [94] said Bill of Exceptions contains a condensed statement in narrative form of all the evidence given in said cause, and upon which the judgment therein is based.

Dated this 24th day of January, 1947.

/s/ ANTHONY J. DIMOND,
Judge.

[Endorsed]: Filed Jan. 24, 1947. [95]

[Title of District Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD
To the Clerk of the District Court, Third Division,
Territory of Alaska:

You are hereby requested to make a transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to an appeal taken in the above-entitled cause, and to include in such transcript of record, the following papers of record in said cause, to-wit:

1. Complaint.
2. Answer.
3. Memorandum of Exceptions.
4. Judgment.
5. Petition for Appeal.
6. Assignment of Errors.
7. Order allowing Appeal.
8. Citation on Appeal.
9. Bill of Exceptions.
10. Stipulation of January 24, 1947.
11. Order Settling Bill of Exceptions.
12. This Praecipe.

Respectfully,

/s/ GEORGE B. GRIGSBY,
Attorney for Defendant.

Service Admitted January 31st, 1947.

/s/ J. L. McCARREY, JR.,
Attorney for Plaintiff.

[Endorsed]: Filed Jan. 31, 1947. [96]

CERTIFICATE OF CLERK TO
TRANSCRIPT OF RECORD

United States of America,
Territory of Alaska,
Third Division—ss.

I, M. E. S. Brunelle, Clerk of the District Court for the Territory of Alaska, Third Division, do hereby certify that the foregoing and hereto annexed 96 pages, numbered from 1 to 96, inclusive, are a full, true and correct transcript of the records and files of the proceedings in the above entitled cause as the same appears on the records and files in my office; that this transcript is made in accordance with the stipulation for praecipe filed in my office on the 31st day of January, 1947; that the foregoing transcript has been prepared, examined and certified to by me, and that the costs thereof, amounting to \$16.00, has been paid to me by George B. Griggsby, counsel for the appellant herein.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this 20th day of February, 1947.

[Seal] /s/ M. E. S. BRUNELLE,

Clerk of the District Court, Territory of Alaska,
Third Division.

[Endorsed]: No. 11561. United States Circuit Court of Appeals for the Ninth Circuit. Northern Truck Line, Inc., a corporation, Appellant, vs. Earl Dunn, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Territory of Alaska, Third Division.

Filed March 10, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

